

Cheltenham Borough Council
Cabinet – 10th April 2018
Implementation of Enforcement Powers
Housing and Planning Act 2016

Accountable member	Councillor Andrew McKinlay, Cabinet member for Development and Safety
Accountable officer	Mark Nelson, Enforcement Manager
Ward(s) affected	All
Key/Significant Decision	Yes
Executive summary	This report sets out new enforcement powers contained in the Housing and Planning Act 2016 (Part 2), including the use of civil penalties. The criteria for deciding the levels of such penalties are contained in Appendix 2.
Recommendations	<ol style="list-style-type: none"> 1. That Cabinet approves, with immediate effect, the ability of the Council to impose fixed penalties, as detailed in the report, and the criteria for determining the level of penalty as contained in Appendix 2; 2. That Cabinet approves, with immediate effect, the Council's use of powers to impose rent repayment orders, as detailed in this report; 3. That Cabinet approves the Council's use of banning orders, as detailed in this report, once Chapter 2, Part 2 of the Housing and Planning Act 2016 is in force; 4. That Cabinet authorises the Director of Environment to take such actions and decisions as are necessary to facilitate the effective implementation and operation of the Council's powers referred to in this report.

Financial implications	<p>The Government has published regulations that state that the income from civil penalties can be retained by the local authority. The income must be used to cover the administration, legal costs and expenses incurred in carrying out its private rented sector enforcement function. Any amount outside of that has to be paid into the consolidated fund.</p> <p>http://www.legislation.gov.uk/uksi/2017/367/contents/made</p> <p>Contact officer: Keith Saunders keith.suanders@cheltenham.gov.uk , 01242 264124</p>
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Legal implications	<p>The provisions in the Housing and Planning Act 2016 were brought in to stop landlords renting out unsafe and substandard accommodation with enforcement carried out through local authorities.</p> <p>The provisions relating to civil penalties and rent repayment orders have been in force since 6 April 2017 and allow the Council to commence enforcement immediately and should be used to stop and later to prevent landlords from undertaking those actions they seek to penalise.</p> <p>However, the provisions relating to banning orders are yet to be allocated a formal commencement date. In the meantime, the Government has brought into force the Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018. These regulations state what banning order offences are, which provides useful guidance for local authorities for the future. Further, the provisions requiring local authorities to keep a database of rogue landlords or property agents will come into force on 6 April 2018. The Act states what information should be kept on the database which will assist local authorities should enforcement become necessary.</p> <p>Contact officer: Nishat Choudhury , nishat.choudhury@teWKesbury.gov.uk, 01684 272069</p>
HR implications (including learning and organisational development)	None
Key risks	See appendix 1
Corporate and community plan Implications	<p>The recommended outcomes of this report positively contribute to the following Corporate and Community Plan objectives:-</p> <ul style="list-style-type: none"> Cheltenham's environmental quality and heritage is protected, maintained and enhanced; People live in strong, safe and healthy communities.
Environmental and climate change implications	Associated improvement of property may contribute to the energy efficiency of private rented stock.
Property/Asset Implications	None

1. Background

1.1 Section 126 and Schedule 9 of the Housing and Planning Act 2016 introduced the power to impose civil penalties, by issue of a fixed penalty notice, as an alternative to prosecution for certain housing offences. The power to impose a civil penalty came into force on 6 April 2017. **The powers enable Local Authorities to impose civil penalties of up to £30,000 in respect of the following offences:**

- Failure to comply with an Improvement Notice under Section 30 of the Housing Act 2004;
- Offences relating to licensing of HMOs under Section 72 of the Housing Act 2004;
 - i) Section 72 (1) being in control or managing an HMO which is required to be licensed but

is not so licensed;

- Section 72 (2) being in control or managing an HMO which is licensed but knowingly permitting occupation over and above the number authorised by the licence;
- Section 72 (3) being a licence holder who fails to comply with any condition of a licence.
- Offences in relation to licensing of Houses under Part 3 of the Act (Selective Licensing);
 - i) Section 95 (1) being in control or managing a house which is required to be licensed but is not so licensed;
 - ii) Section 95 (2) being a licence holder who fails to comply with any condition of a licence.
- Contravention of an overcrowding notice under Section 139 of the Housing Act 2004;
- Failure to comply with management regulations in respect of HMOs under Section 234 of the Housing Act 2004.

- 1.2 In determining the civil penalty amount, the Local Housing Authority must have regard to the statutory guidance issued under schedule 9 of the Housing and Planning Act 2016 and also to the DCLG developed 'Civil Penalty Matrix'.
- 1.3 The approach to issuing a civil penalty is made up of two stages, firstly determining the appropriate sanction and secondly (if appropriate) the level of civil penalty charged.
- 1.4 When determining the appropriate sanction the Council must satisfy itself that if the case were to be prosecuted there would be a 'realistic prospect of a conviction'. This is currently determined by consulting the Crown Prosecution Service "Code for Crown Prosecutors" which provides two tests: (i) the evidential test and (ii) the public interest test which must both be satisfied; that being the Council has sufficient evidence to be able to prove the offence and that it is in the public interest to take such action.
- 1.5 Statutory guidance has been issued by the Secretary of State under Schedule 9 (12) of the Housing and Planning Act 2016 and Local Authorities must have regard to this when exercising its functions in respect of civil penalties.
- 1.6 The maximum penalty that can be set is £30,000. A minimum penalty level has not been set and the appropriate amount of penalty is to be determined by the Local Housing Authority. Only one penalty can be imposed in respect of the same offence.
- 1.7 A person who receives a fixed penalty notice may appeal to the First-Tier Tribunal against the decision to impose a penalty or the amount of the penalty. The fixed penalty notice is then suspended until the appeal is heard.
- 1.8 Ultimately, it is for the Local Authority to decide which option it wishes to pursue but as a general principle, local authorities should normally prosecute where an offence is particularly serious or where the offender has committed similar offences in the past.
- 1.9 Prosecution in serious cases demonstrates that the Local Authority will not hesitate to take formal action where needed and is likely to act as a strong deterrent both to the offender and other rogue landlords. A prosecution also enables the Local Authority to apply for a banning order following a successful conviction.
- 1.10 All Gloucestershire Councils have adopted an enforcement matrix which is used to determine the most appropriate course of action in enforcement cases (Appendix 2). The principle of the enforcement matrix is to provide a score based on a number of factors, both negative and positive. Bands are provided to reflect the score produced and the appropriate courses of action for dealing with the identified situation.
- 1.11 **Rent Repayment Orders (RROs)** are extended by the Act. Tenants who live in unsafe rented

accommodation resulting in the prosecution of their landlord should be able to be compensated by having their rent payments returned to them through a rent repayment order. RROs cover the following situations:

- Failure to comply with an Improvement Notice under section 30 Housing Act 2004;
- Failure to comply with an improvement notice or prohibition order under section 32 Housing Act 2004;
- Breach of a Banning Order made under section 21 of the Housing and Planning Act 2016;
- Control or management of a HMO or of an unlicensed property in an area subject to the selective licensing regime under the Housing Act 2004;
- Using violence to secure entry to a property under section 6 of the Criminal Law Act 1977;
- Illegal eviction or harassment of the occupiers of a property under section 1 of the Protection from Eviction Act 1977.

1.12 Where a landlord has been convicted of an offence as detailed in paragraph 1.10, the local housing authority must consider applying for an RRO as detailed in guidance issued by DCLG (now MHCLG). The Council must serve a notice of intended proceedings before applying for an RRO within 12 months of the offence being committed; the landlord must be invited to make his representations within at least 28 days. In these circumstances, the First-tier Tribunal must order that the maximum amount of rent is repaid (capped at 12 months).

1.13 The Act provides local housing authorities with an option to apply for a rent repayment order where the landlord has not been convicted of the offence for which the rent repayment order application is being made, in these circumstances the First-tier Tribunal will need to be satisfied beyond reasonable doubt that the landlord has committed the specified offence.

1.14 Banning Orders

1.15 A new power has been introduced to allow local housing authorities to apply for banning orders against letting agents or rogue landlords if they have been convicted of a banning order offence. Banning order offences are specified in the Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017 and include unlawful eviction, harassment, violent entry, failing to comply with an improvement notice or prohibition order, contravention of overcrowding notices and HMO management regulations. At the time of writing, this power is not yet in force. However, regulations are coming into force on 6 April 2018 on local authorities' powers to keep a rogue landlord/property database and a description of banning order offences.

2. Reasons for recommendations

2.1 To help improve conditions in the private rented sector and to tackle the activities of rogue landlords.

3. Alternative options considered

3.1 The additional enforcement options to issue fixed penalty notices are a power and not a duty and the Council therefore has the option not to implement them. Failure to do so, however, will reduce the ability to more effectively improve landlord behaviour and lose revenue, which may be invested in improving private rented sector enforcement work.

4. Consultation and feedback

- 4.1** The civil penalty policy in Appendix 2, has been determined in liaison with district councils in Gloucestershire and in consultation with the National Landlords Association and the Gloucestershire Landlords Association.

5. Performance management –monitoring and review

- 5.1** The success of these policies will be monitored as part of the Enforcement team's performance framework.

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Appendices	1. Risk Assessment 2. Factors Determining the Level of Civil Penalty.
Background information	1. Housing and Planning Act 2016

The risk				Original risk score (impact x likelihood)			Managing risk				
Risk ref.	Risk description	Risk Owner	Date raised	Impact 1-5	Likelihood 1-6	Score	Control	Action	Deadline	Responsible officer	Transferred to risk register
	If the powers outlined in the report are not adopted, this will reduce the ability of the authority to effectively ensure appropriate landlord behaviour and will also result in the loss of a revenue-generating opportunity, which could otherwise be invested in improving the effectiveness of private rented sector enforcement work.	Mark Nelson	March 2018	2	5	10	Reduce	Adopt and enforce available powers	April 2018	Mark Nelson	
Explanatory notes Impact – an assessment of the impact if the risk occurs on a scale of 1-5 (1 being least impact and 5 being major or critical) Likelihood – how likely is it that the risk will occur on a scale of 1-6 (1 being almost impossible, 2 is very low, 3 is low, 4 significant, 5 high and 6 a very high probability) Control - Either: Reduce / Accept / Transfer to 3rd party / Close											