

Public Document Pack



Democratic Services
White Cliffs Business Park
Dover
Kent CT16 3PJ

Telephone: (01304) 821199
Fax: (01304) 872453
DX: 6312
Minicom: (01304) 820115
Website: www.dover.gov.uk
e-mail: democraticservices@dover.gov.uk

3 October 2017

Dear Councillor

NOTICE IS HEREBY GIVEN THAT a meeting of the **SCRUTINY (COMMUNITY AND REGENERATION) COMMITTEE** will be held in the Council Chamber at these Offices on Wednesday 11 October 2017 at 6.00 pm when the following business will be transacted.

Members of the public who require further information are asked to contact Rebecca Brough on (01304) 872304 or by e-mail at rebecca.brough@dover.gov.uk.

Yours sincerely

A handwritten signature in black ink, appearing to read "Nicky", written over a white background.

Chief Executive

Scrutiny (Community and Regeneration) Committee Membership:

L A Keen (Chairman)
G Cowan (Vice-Chairman)
P J Hawkins
T A Bond
P I Carter
N Dixon
R J Frost
M J Ovenden
G Rapley
N A G Richards

AGENDA

1 **APOLOGIES**

To receive any apologies for absence.

2 **APPOINTMENT OF SUBSTITUTE MEMBERS**

To note appointments of Substitute Members.

3 **DECLARATIONS OF INTEREST** (Page 4)

To receive any declarations of interest from Members in respect of business to be transacted on the agenda.

4 **MINUTES**

To confirm the Minutes of the meeting of the Committee held on 12 September 2017 (to follow).

5 **PUBLIC SPEAKING**

Please note that in accordance with the agreed Protocol for Public Speaking at Overview and Scrutiny, the right to speak only applies to agenda item 12.

The right of the public to speak does not apply to the following agenda items: Apologies, Appointment of Substitute Members, Declarations of Interest, Minutes, the Forward Plan, the Scrutiny Work Programme, any agenda item that is not accompanied by a written report and items that are exempt business.

Members of the public wishing to speak must register to do so by no later than 2.00 pm on the second working day before the meeting.

6 **DECISIONS OF THE CABINET RELATING TO RECOMMENDATIONS FROM THE SCRUTINY (COMMUNITY AND REGENERATION) COMMITTEE**

The following decisions were taken by the Cabinet at its meeting held on 2 October 2017 in respect of recommendations from the Scrutiny (Community and Regeneration) Committee:

- Dover District Council Local Development Scheme

7 **ISSUES REFERRED TO THE COMMITTEE BY COUNCIL, CABINET, SCRUTINY (POLICY AND PERFORMANCE) COMMITTEE OR ANOTHER COMMITTEE**

There are no items for consideration.

8 **ITEMS CALLED-IN FOR SCRUTINY OR PLACED ON THE AGENDA BY A MEMBER OF THE COMMITTEE, ANY INDIVIDUAL NON-EXECUTIVE MEMBERS OR PUBLIC PETITION**

- (a) Items placed on the agenda by a Member of the Committee or any individual Non-Executive Member

Any individual Councillor may request that a matter is placed on the agenda of one of the Council's Overview and Scrutiny Committees.

There are no items for consideration.

- (b) Call-In

Executive Decisions may be called-in by the Chairman or Spokesperson of the Scrutiny (Policy and Performance) Committee or any three non-executive members. Call-Ins are heard by the Scrutiny (Policy and Performance) Committee unless it decides to refer the matter to the Scrutiny (Community and

Regeneration) Committee.

There are no items for consideration.

(c) Public Petitions

There are no items for consideration.

9 **NOTICE OF FORTHCOMING KEY DECISIONS** (Pages 5 - 8)

It is intended that Members should use the Notice of Forthcoming Key Decisions to identify topics within the remit of the Committee for future scrutiny.

10 **SCRUTINY WORK PROGRAMME** (Pages 9 - 11)

It is intended that the Committee monitor and prioritise its rolling work programme.

11 **CAMELOT EUROPE PRESENTATION**

To receive a presentation from Camelot Europe.

12 **PRIVATE SECTOR HOUSING ENFORCEMENT POLICY REPORT** (Pages 12 - 73)

To consider the attached report of the Director of Finance, Housing and Community.

Access to Meetings and Information

- Members of the public are welcome to attend meetings of the Council, its Committees and Sub-Committees. You may remain present throughout them except during the consideration of exempt or confidential information.
- All meetings are held at the Council Offices, Whitfield unless otherwise indicated on the front page of the agenda. There is disabled access via the Council Chamber entrance and a disabled toilet is available in the foyer. In addition, there is a PA system and hearing loop within the Council Chamber.
- Agenda papers are published five clear working days before the meeting. Alternatively, a limited supply of agendas will be available at the meeting, free of charge, and all agendas, reports and minutes can be viewed and downloaded from our website www.dover.gov.uk. Minutes are normally published within five working days of each meeting. All agenda papers and minutes are available for public inspection for a period of six years from the date of the meeting.
- If you require any further information about the contents of this agenda or your right to gain access to information held by the Council please contact Rebecca Brough, Team Leader - Democratic Support, telephone: (01304) 872304 or email: rebecca.brough@dover.gov.uk for details.

Large print copies of this agenda can be supplied on request.

Declarations of Interest

Disclosable Pecuniary Interest (DPI)

Where a Member has a new or registered DPI in a matter under consideration they must disclose that they have an interest and, unless the Monitoring Officer has agreed in advance that the DPI is a 'Sensitive Interest', explain the nature of that interest at the meeting. The Member must withdraw from the meeting at the commencement of the consideration of any matter in which they have declared a DPI and must not participate in any discussion of, or vote taken on, the matter unless they have been granted a dispensation permitting them to do so. If during the consideration of any item a Member becomes aware that they have a DPI in the matter they should declare the interest immediately and, subject to any dispensations, withdraw from the meeting.

Other Significant Interest (OSI)

Where a Member is declaring an OSI they must also disclose the interest and explain the nature of the interest at the meeting. The Member must withdraw from the meeting at the commencement of the consideration of any matter in which they have declared a OSI and must not participate in any discussion of, or vote taken on, the matter unless they have been granted a dispensation to do so or the meeting is one at which members of the public are permitted to speak for the purpose of making representations, answering questions or giving evidence relating to the matter. In the latter case, the Member may only participate on the same basis as a member of the public and cannot participate in any discussion of, or vote taken on, the matter and must withdraw from the meeting in accordance with the Council's procedure rules.

Voluntary Announcement of Other Interests (VAOI)

Where a Member does not have either a DPI or OSI but is of the opinion that for transparency reasons alone s/he should make an announcement in respect of a matter under consideration, they can make a VAOI. A Member declaring a VAOI may still remain at the meeting and vote on the matter under consideration.

Note to the Code:

Situations in which a Member may wish to make a VAOI include membership of outside bodies that have made representations on agenda items; where a Member knows a person involved, but does not have a close association with that person; or where an item would affect the well-being of a Member, relative, close associate, employer, etc. but not his/her financial position. It should be emphasised that an effect on the financial position of a Member, relative, close associate, employer, etc OR an application made by a Member, relative, close associate, employer, etc would both probably constitute either an OSI or in some cases a DPI.



Notice of Forthcoming Key Decisions

[This updated version of the Notice supersedes all other versions issued in previous months]

Publication Date: 1 September 2017

Notice of Forthcoming Key Decisions which will be made on behalf of the Council

Key Decisions 2017/18	Item	Date of meeting at which decision will be taken by Cabinet (unless specified otherwise)
1	Neighbourhood Plans	June 2013 and ongoing (see entry)
2	Dover Town Centre Regeneration: To consider progress on the Compulsory Purchase Order and any issues arising which may go beyond the scope of the resolutions incorporated in Minute CAB 87	8 September 2014/24 April 2015/7 March 2016 and as necessary
3	Approval to develop detailed plans for replacement of Dover Leisure Centre	25 July/20 September and 15 December 2016 (special Cabinet meetings) and 11 September 2017 (special Cabinet meeting)
4	Statutory Brownfield Register	Decision to be taken by the Head of Regeneration and Development – December 2017
5	Review of Tenancy Strategy and Tenancy Policy	2 October/6 November 2017
6	Review of Local Plan	1 March 2017 and dates to be confirmed
7	Property Acquisitions	Ongoing (decisions to be taken by Portfolio Holder for Corporate Resources and Performance)
8	Approval for public consultation on draft South Barracks Conservation Area Appraisal	3 July 2017 and 6 November 2017
9	To consider the results of public consultation on the Waterloo Crescent Conservation Area Appraisal and approve public consultation on proposed boundary extensions	8 May 2017
10	To consider the results of public consultation on the extension of the Nelson Street Conservation Area boundary and the introduction of an Article 4 Direction	8 May and 6 November 2017
11	Approval to cease providing a face-to-face customer service function at Aylesham, Deal and Sandwich area offices	3 July and 4 September 2017
12	Approval of revisions to the 2012 Housing Assistance Policy	3 July 2017
13	Approval of amended Dover District Council Events Policy and Land Hire Agreement	4 September 2017

Key Decisions 2017/18	Item	Date of meeting at which decision will be taken by Cabinet (unless specified otherwise)
14	Approval to release funding and carry out regular beach maintenance works between Oldstairs Bay and Sandwich Bay	12 June 2017
15	Local Plan Review – Engagement Strategy	8 May 2017
16	Appointment of contractor to carry out building extension and repair works at Kearsney Abbey and Russell Gardens as part of the Heritage Lottery Funded ‘Parks for People’ project	Decision to be taken by the Portfolio Holder for Property Management and Public Protection – July/August 2017
17	Appointment of contractor to carry out landscape and watercourse restoration works at Kearsney Abbey and Russell Gardens as part of DDC’s Heritage Lottery Funded ‘Parks for People’ project	Decision to be taken by the Portfolio Holder for Property Management and Public Protection – July/August 2017
18	To approve the policy on civil penalties and rent repayment orders for private landlords	2 October 2017
19	To seek approval for wet and dryside improvements to Tides Leisure and Indoor Tennis Centre, Deal	4 December 2017
20	Dover Waterfront Masterplan Area Action Plan	4 December 2017/15 January 2018 and dates to be confirmed
21	Planning Enforcement Plan	6 November 2017 and dates to be confirmed
22	Representations on the Thanet District Council Local Plan	5 March 2018
23	Fit-out of Aylesham retail units and related funding	3 July 2017
24	Project approval for development of land at Foxborough Close, Woodnesborough to provide affordable housing	3 July 2017
25	Approval of project to deliver new modular homes to provide temporary housing for homeless households	2 October 2017
26	To consider a revised East Kent Growth Framework	4 September 2017
27	The Open Golf Championship 2020	4 September 2017
28	Local Development Scheme	4 September 2017
29	To seek approval for public consultation on the draft Sandwich Walled Town Conservation Area Appraisal	5 March 2018 and date to be confirmed
30	Approval of contracts for works to Middle Street Car Park, Union Road Car Park and general maintenance work to remaining car parks.	4 September 2017

Key Decisions 2017/18	Item	Date of meeting at which decision will be taken by Cabinet (unless specified otherwise)
31	Approval to carry out works to area adjacent to River Dour and garages to the rear of Dolphin House, Dover	2 October 2017
32	Approval to carry out urgent repairs to Deal Pier	2 October 2017
33	Award of replacement pitched roofing contract 2017-2020	2 October/6 November 2017
34	Future and funding of Inspire Fund	15 January 2018

- Note: (1) Key Decisions which are shaded have already been taken and do not appear in this updated version of the Notice of Forthcoming Key Decisions.
- (2) The Council's Corporate Management Team reserves the right to vary the dates set for consultation deadline(s) and for the submission of reports to Cabinet and Council in respect of Key Decisions included within this version of the notice. Members of the public can find out whether any alterations have been made by looking at the Council's website (www.dover.gov.uk).

OVERVIEW AND SCRUTINY WORK PROGRAMME 2017/18

SCRUTINY (COMMUNITY AND REGENERATION) COMMITTEE

Month	Scrutiny (Community and Regeneration) Committee	Resource Implications for Scrutiny				Action
		Members	Officers (Corporate Expenditure unless otherwise stated)	Scrutiny Budget Expenditure		
				Projected	Actual	
May 2017	Local Plan Engagement Strategy	Single Meeting	Chief Executive	£0	£0	To consider the report.
June 2017	Registered Providers of Social Housing	Single Meeting	Director of Finance, Housing & Community	£0	£0	To scrutinise Registered Providers of Social Housing.
July 2017	Approval of revisions to the 2012 Housing Assistance Policy	Single Meeting	Director of Finance, Housing & Community	£0	£0	To consider the report.
	Development of New Affordable Housing - Woodnesborough	Single Meeting	Director of Finance, Housing and Community	£0	£0	To consider the report.
	Aylesham Village Expansion – Retail Units, Third Party Land and Post Development Improvements	Single Meeting	Chief Executive	£0	£0	To consider the report.
	Development of New Affordable Housing on Land at New Dover Road, Capel-le-Ferne	Single Meeting	Director of Finance, Housing and Community	£0	£0	To consider the report.
August 2017	Temporary Transfer of Services from Kent and Canterbury Hospital	Single Meeting	East Kent Hospitals University Foundation Trust	£0	£0	Meeting did not go ahead due to non-attendance of EKHUFT.

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Version: Tuesday, 03 October 2017

Agenda Item No 10

Month	Scrutiny (Community and Regeneration) Committee	Resource Implications for Scrutiny				Action
		Members	Officers (Corporate Expenditure unless otherwise stated)	Scrutiny Budget Expenditure		
				Projected	Actual	
September 2017	Local Development Scheme	Single Meeting	Chief Executive	£		To consider the report.
	Regeneration Update – Dover Waterfront and Town Centre Regeneration	On-going	Head of Inward Investment	£		To receive an update on regeneration in the Dover District. To scrutinise the regeneration proposals for the area around the ‘Banksy’ building and connectivity to the waterfront, bench street, Dover museum and the crypt.
	Temporary Transfer of Services from Kent and Canterbury Hospital	Single Meeting 19 September 2017	East Kent Hospitals University Foundation Trust	£		To receive an update from EKHUFT.
October 2017	Revised Private Sector Housing Enforcement Policy	Single Meeting	Director of Finance, Housing & Community	£0		To consider the report.
	Explore utilising long term commercial empty properties in Dover	Single Meeting	Camelot Europe	£		To receive a presentation from Camelot Europe in respect of the potential alternative uses of vacant property [Added]
Nov 2017	Review of Tenancy Strategy and Tenancy Policy	Single Meeting	Director of Finance, Housing and Community	£		To consider the report. [Selected from the Forward Plan]
	East Kent Housing – Proposed new formal resident involvement structure	Single Meeting	East Kent Housing	£		To consider the report.
	Communication and Engagement	Single Meeting	Director of Community Services	£0		To scrutinise the council’s communication and engagement with local residents.

Month	Scrutiny (Community and Regeneration) Committee	Resource Implications for Scrutiny				Action
		Members	Officers (Corporate Expenditure unless otherwise stated)	Scrutiny Budget Expenditure		
				Projected	Actual	
Dec 2017 – Apr 2018	Private sector landlords	Single Meeting	Director of Finance, Housing and Community	£0		To scrutinise the arrangements for private sector landlords in the district.
	Regeneration Update	Single Meeting	Head of Inward Investment	£0		To receive an update from the Head of Inward Investment.
	Crime and Disorder Update	Single Meeting	Director of Community Services	£0		To receive an update.

The following items have been identified for inclusion within the Work Programme (date to be confirmed):

Agreed for Inclusion?	Subject	Resource Implications	Action

Subject:	REVISED PRIVATE SECTOR HOUSING ENFORCEMENT POLICY
Meeting and Date:	Cabinet - 2 October 2017
Report of:	Mike Davis, Director of Finance, Housing and Community
Portfolio Holder:	Councillor Mike Conolly, Portfolio Holder for Housing, Health and Wellbeing
Decision Type:	Key Decision
Classification:	Unrestricted

Purpose of the report: To take advantage of new enforcement powers with the aim of improving the quality of the privately rented housing stock and tackling rogue landlords.

Recommendation: Cabinet is recommended to approve revisions to the Private Sector Housing Enforcement Policy.

1. Summary

- 1.1 At its meeting on 2 December 2013 Cabinet approved a corporate Enforcement Policy and the Private Sector Housing Enforcement Policy. On 7 March 2016 Cabinet approved amendments to the Private Sector Housing Policy to take account of new regulations made in 2015.
- 1.2 The Housing and Planning Act 2016 introduced new powers for local authorities to tackle rogue landlords. These new powers include;
- Civil penalties of up to £30,000
 - Extension of Rent Repayment Order
 - Banning orders for most prolific offenders
 - Database of rogue landlords/property agents
 - Tougher fit and proper person test for landlords of licensed properties
 - Sharing data on tenancy deposit schemes with local authorities.
- 1.3 The use of most of these powers will be discretionary but there is an expectation that local housing authorities will cooperate with DCLG in maintaining and updating the database of rogue landlords and letting agents. Given the relatively small number of rogue landlords operating in the district we anticipate that the new powers would be used in a relatively small number of cases, probably less than 5 per annum. However, we believe they could be effective additional tools, which would allow the Council to take more immediate action and have a deterrent effect while also providing some financial benefits.
- 1.4 In order to be able to impose financial penalties the Council is required to have a policy for determining when to issue a penalty notice and the amount of penalty to be charged. It is therefore recommended that the current Private Sector Housing Enforcement Policy is amended to allow the use of the new powers relating to civil penalties and Rent Repayment Orders.
- 1.5 The civil penalties power effectively gives local authorities an alternative to prosecution for offences committed under the Housing Act 2004, including all HMO

offences. Local authorities now have a choice over whether to prosecute or impose a penalty with a maximum fine of £30,000. The benefit of imposing fines is that the Council will be able to retain the money recovered, which is not currently the case with fines imposed in the magistrates' court.

2. Introduction and Background

2.1 As part of the Governments policy to improve the private rented sector and to tackle rogue landlords, The Housing and Planning Act 2016 has introduced a number of discretionary new powers with the following commencement dates.

- 6th April 2017 – (made by Regulations) extension to Rent Repayment Orders (RRO) and Financial Penalty (FP) as enforcement options.
- 1st October 2017 (this date may be delayed due to election) – Landlord Banning Order, Banning Order Offences and Database of Rogue Landlords

2.2 While the powers relating to fixed penalties and Rent Repayment Orders are discretionary in terms of when they are used the government has issued guidance on how they should be used.

2.3 Instead of prosecuting a landlord in the Magistrates Court, the Council can now issue a **Financial Penalty Notice (FP)** to a landlord who commits one of a number of housing related offences. A FP can be served for the following: for the failure of a landlord to comply with an improvement notice requiring works, for HMO or property licensing offences, this includes the failure to licence a licensable property or; when licenced, a failure to comply with the conditions, including controlling numbers of tenants. In a HMO a (FP) can be issued to a landlord who fails to comply with an overcrowding notice or does not manage the property properly so that there are breaches of the HMO Management Regulations. There is no provision for a FP in the case of offences of Prohibition Orders.

2.4 This new power effectively gives local authorities an alternative to prosecution for offences committed under the Housing Act 2004, including all HMO offences. Local authorities now have a choice over whether to prosecute or impose a penalty with a maximum fine of £30,000. The benefit of imposing fines is that the Council will be able to retain the money recovered, which is not currently the case with fines imposed in the magistrates' court.

2.5 It is anticipated that from October 2017, a FP can be issued to a landlord who breaches the requirements of a Banning Order.

2.6 On 6th April 2017, the power to apply for a **Rent Repayment Order (RRO)** was extended. An application has to be made to the **First Tier (Property) Tribunal (FTT)** for an RRO to be made. A RRO can now be made in respect of a number of 2004 Housing Act offences, including the failure of a landlord to comply with an improvement notice or a prohibition order. Additionally it includes offences linked to poor tenancy management including using violence to secure entry to a property and offences of illegal eviction and harassment of the tenant. A RRO would require the landlord to repay 12 months rent to the tenant or to the Council in the case of Housing Benefit being paid.

2.7 It is envisaged that from October 2017 a RRO application can be made to a FTT for a landlord who breaches the requirements of a Banning Order.

- 2.8 The statutory guidance issued under Schedule 9 of the Housing and Planning Act 2016 requires local housing authorities to have regard to the guidance in exercising of their function in respect of civil penalties as an alternative to prosecution. The guidance states that it expects the maximum amount to be reserved for the very worst offenders with the actual amount levied reflecting the severity of the offence and any previous record of offending.
- 2.9 The recommended policy for the Council in determining its approach in setting its financial penalty is set out at Annex 1; entitled “Determining the Penalty”. This proposes a process for determining the approach and appropriate level of FP which will ensure consistency, transparency and a fair treatment for all parties. The process takes account of the requirements of the 2016 Act and the statutory guidance issued by the Secretary of State in relation to making applications for Rent Repayment Orders and Financial Penalties (referred to as Civil Penalties within the guidance). Annex 2 is the proposed revised Private Sector Housing Enforcement Policy 2017 which includes this new provision.
- 2.10 The decision whether to prosecute or impose a FP will be considered for each offence. It is recommended that prosecution will be the preferred option for the higher banded offences and offences that the LHA determine fall at the threshold where it is proportionate to look to seek further redress ultimately through recording of a prosecution on the Rogue Landlord Database and banning through an application for a Banning Order. Reference will be made to Table 1. This approach will meet the Government’s aim of clamping down heavily on a criminal landlord or letting agents.

Table 1: Banding the Offence to Determining the Action (using scoring matrix)

Band 1				Band 2				Band 3				Band 4			
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Caution															
Financial Penalty – Rent Repayment Order optional															
			Financial Penalty and Rent Repayment Order Register on Rogue Landlord Database (2 FP within 12M period)												
							Prosecution and Rent Repayment Order Banning Order Offence – register on Database								
										Consider -application to Ban Landlord					

- 2.11 The process for determining the penalty involves a five stage consideration. These take into account the statutory guidance, in that the FP should reflect: the severity of the offence, the culpability and track record of the offender, the harm caused to the tenant, punishment of the offender, deterring both the offender and others from committing similar offences and any financial benefit the offender has from offending.

Stage1: Banding the offence. The initial FP band is decided following the assessment of two factors;

- Culpability of the landlord; and
- The level of harm that the offence has had.

Stage 2: Amending the penalty band based on aggravating factors.

Stage 3: Amending the penalty band based on mitigating factors.

Stage 4: A Penalty Review; to ensure it is proportionate and reflects the landlord’s ability to pay.

Stage 5: Totality Principle. To ensure the total penalty is just and proportionate to the offending behaviour in the case of multiple offences or where a RRO is to be applied for.

2.12 The five stage process enables the Council to determine a penalty score and FP amount. Table 2 provides details on the four Bands and Penalty Scores.

Table 2: Financial Penalty Banding and Penalty Scores

Penalty Band	Band 1				Band 2				Band 3				Band 4			
Penalty Score	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Financial Penalty	£250	£500	£750	£1000	£2000	£4000	£6000	£8000	£10,000	£12,000	£15,000	£18,000	£20,000	£23,000	£26,000	£30,000

After Council officers have calculated the level of the FP, this will then be checked by the Private Sector Housing manager or in his absence a more senior manager within the Housing service prior to being passed for processing. A checklist will be completed and kept on file in line with the Council's retention policy.

2.13 It is felt that the FTT is best placed to determine the RRO award to either the Council or tenant following a respective application. On this basis, "Determining the Penalty", Appendix 1, looks for the Council to apply to the FTT for the maximum rent repayment based on the rent paid over the relevant period in each case and to permit the FTT to determine the sum of the RRO.

3.0 Identification of Options

3.1 Option 1. Not to implement a Financial Penalty Notice scheme or have a policy on Rent Repayment Orders and therefore leave the current enforcement policy unchanged.

3.2 Option 2. Implement a Financial Penalty Notice scheme and policy on Rent Repayment Orders in accordance with legislation and government guidance and set out in the proposed revised Private Sector Housing Enforcement Strategy.

3.3 Option 3. To make alternative or additional amendments to the enforcement policy and/or the charging policy recommended in the report.

4.0 Evaluation of Options

4.1 Option 1. This is not considered appropriate as the new powers are intended to encourage a greater level of compliance thereby improving the quality and safety of homes as well as meeting a government expectation that housing authorities will use the powers to "clamp down on rogue landlords".

4.2 Option 2. This is the preferred option. While the process for determining fixed penalty notices may appear complex it is important that we have regard to government guidance and implement a scheme which is fair and proportionate so as to minimise as far as possible the risk of challenge. The ability to use the new powers will give the Council more options for tackling rogue landlords and improving housing standards and the occasional use of the powers should also have a deterrent effect.

4.3 Option 3. The recommended revisions to the enforcement policy and charges have been developed in accordance with government guidance and officers believe they provide the best approach to implementing the new powers in a fair and proportionate way.

5.0 Resource Implications

5.1 There will be an increase in staff workload as a result of the need to serve penalty charge notices and apply for rent repayment orders but we are not seeking any increase in the number of staff at this time.

5.2 As these are new powers there isn't any comparable data we can use to estimate potential income. There aren't large numbers of rogue landlords operating in the district and consequently we anticipate that the number of penalty notices issued will be relatively low, probably around 2 or 3 per annum. If we assume that the penalty sum is most likely to be in the lower banding ranges (Bands 1 & 2), the income is unlikely to exceed £15,000 per annum.

5.3 The benefit of using civil penalties is that the income can be retained by the Council unlike fines imposed by the magistrate's court. This is subject to the income being used to further the local housing authority's statutory functions in relation to their enforcement activities covering the private rented sector.

6 Corporate Implications

6.1 If option 2 is approved, then the new provisions contained in the Housing and Planning Act 2016 will need to be delegated to Director of Finance, Housing and Community, Head of Strategic Housing and Private Sector Housing Manager.

6.2 Comment from the Director of Finance (linked to the MTFP): Accountancy have been consulted and have no further comments to add. (DL)

6.3 Comment from the Solicitor to the Council: The solicitor to the Council has been consulted in the preparation of this report and has no further comments to make.

6.4 Comment from the Equalities Officer: This report does not specifically highlight any equalities implications however, in discharging their responsibilities members are required to comply with the public sector equality duty as set out in section 149 of the Equality Act 2010 <http://www.legislation.gov.uk/ukpga/2010/15>

7 Appendices

Annex 1: Determining the Penalty

Annex 2: Revised Private Sector Housing Enforcement Policy 2017

8. Background Papers

- i. Civil penalties under the Housing and Planning Act 2016. Guidance for Local Housing Authorities
- ii. Rent repayment orders under the Housing and Planning Act 2016. Guidance for Local Housing.
- iii. Housing and Planning Act 2016

- iv. Corporate Enforcement Policy
- v. Private Sector Housing Enforcement Policy

Contact Officer: Robin Kennedy, Private Sector Housing Manager, Extn 2221.

Housing and Planning Act 2016 and Housing Act 2004

Determining the Penalty for Offences under the Housing Act 2004

The authority to issue a Financial Penalty and Rent Repayment Order came into force on April 6 2017 following the making of the ‘The Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017’ (SI 2017 No. 367) and ‘The Housing and Planning Act 2016 (Commencement No. 5, Transitional Provisions and Savings) Regulations 2017’. These provisions are contained in Part 2 Chapter 4 and Part 5 of the Housing and Planning Act 2016.

Introduction

Financial Penalty (FP)

The new powers to issue a Financial Penalty came into force on April 6 2017 under Chapter 4 and schedule 9 of the Housing and Planning Act 2016 (“2016 Act”). A FP can be issued to a landlord (includes other responsible persons) who commits one of the following Housing Act 2004 (“2004 Act”) offences.

- Section 30 – not comply with an improvement notice
- Section 72 (1) – not licence a house in multiple occupation
- Section 72 (2) – licensed HMO that is overcrowded
- Section 72 (3) – not comply with HMO licence conditions
- Section 95 (1) – not licence a private rented property (non-mandatory HMO)
- Section 95 (2) – not comply with a private rented property licence condition.

- Section 139 – overcrowding notice for HMO
- Section 234 – non-compliance a HMO Management Regulation

A new offence is created by section 21(1) of the 2016 Act; the breach of a Banning Order. The option to issue a FP is available. This power will not be available until later in 2017 with the current proposed commencement date; 1st October 2017.

The new section 249A of the Housing Act 2004 (“2004 Act”) allows the Local Housing Authority (LHA) to issue a FP limiting the maximum penalty at £30,000.

Rent Repayment Orders (RRO)

Rent Repayment Orders can already be applied for by a LHA or tenant under sections 73 and 96 of the 2004 Act for the following offences;

- Offence of failing to license an HMO under section 72 (1) of the 2004 Act;
- Offence of failing to license a licensable house under section 95(1), Part 3 of the 2004 Act.

↪ A tenant can only make an application where the LHA had either secured a conviction *or* following a successful RRO award.

Part 2, Chapter 4 of the 2016 Act widened the option to make an application to the First Tier Tribunal (FTT) for a RRO. This came into force on April 6 2017. An application for a RRO can be made, within 12 month period, by a LHA or tenant against a landlord who commits one of the following Housing Act 2004 (“2004 Act”) offences (whether or not convicted) (*application for RRO - in addition to issuing a FP).

- Failure to comply with an Improvement Notice under section 30*,
- Failure to comply with a Prohibition Order under section 32(1),
- Offence of failing to license an HMO under section 72 (1)*,
- Offence of failing to license a licensable house under section 95(1) Part 3*,
- 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

A new offence is created by section 21(1) of the 2016 Act; the breach of Banning Order. The option to apply for a RRO is available. This power will not be available until later in 2017 with the current proposed commencement date; 1st October 2017.

Financial Penalties as an alternative to taking a prosecution.

The Government have introduced the FP as part of its campaign to clamp down heavily on criminal landlords; Ministers have made it very clear that they expected this power to be used robustly and they are not a lighter option to a prosecution. LHA have been given the authority to both determine whether to prosecute and the level of FP to impose; at up to £30,000. The level of penalty in the Magistrates Court is now unlimited for all offences where a FP could also be issued. All monies collected following the issue of a FP can be retained by the LHA to further its statutory functions in relation to private housing enforcement work.

The 2016 Act has also introduced the “Landlord Banning Order” (LBO) for the most serious and prolific offenders and the “Rogue Landlord Database” (RLD) of rogue landlords and property agents convicted of certain offences. Both elements are scheduled to come into force on 1 October 2017. Whilst a landlord issued with a FP* can be placed on the RLD (* requiring two FP within a 12 month period) a FP will not be a “Banning Order Offence” and so the issuing of a FP will preclude a LHA from seeking to apply to a FTT for a LBO.

The legislation does not permit LHA to both issue a FP and prosecute for the same offence. If a person has been convicted or is currently being prosecuted, the LHA cannot also impose a FP in respect of the same offence. Similarly, if a FP has been imposed, a person cannot then be prosecuted of an offence for the same conduct. A LHA must determine which route to follow

The Statutory Guidance says that a prosecution may be the most appropriate option where an offence is particularly serious or where the offender has committed similar offences in the past. The first of five stages of ‘Setting the Penalty’ offers a means of Banding the Offence based on the seriousness of the offence, culpability of the landlord and impact on tenant and community. The five stages allow a wide consideration of the appropriateness of the penalty chosen including the means, and the table below acts as a guide. As part of reviewing whether to prosecute the LHA should consider the scope for working together with other LHA where a landlord has committed breaches in more than one local authority area.

The decision whether to prosecute will be considered for each offence, but the Council will regard prosecution as the preferred option for the higher banded offences and offences that the LHA determine fall at the threshold where it is proportionate to look to seek further redress, ultimately through the RLD and BO procedures. This approach will meet the Government’s aim of clamping down heavily on a criminal landlord or letting agents.

Banding the Offence to Determining the Action (using scoring matrix)

Band 1				Band 2				Band 3				Band 4			
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Caution															
Financial Penalty – Rent Repayment Order optional															
				Financial Penalty and Rent Repayment Order Register on Rogue Landlord Database (2 FP within 12M period)											
								Prosecution and Rent Repayment Order Banning Order Offence – register on Database							
										Consider -application to Ban Landlord					

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Setting the Financial Penalty (FP) for a Landlord.

A Local Authority must determine the level of FP that can be awarded against a landlord. Dover District Council has agreed this five stage process to provide a framework to assist with “*determining the level of fine*” which will ensure consistency, transparency and a fair assessment for all parties.

The process has taken into account the following documents;

1. The statutory guidance issued by the Secretary of State under;
 - Section 41 (4) of the 2016 Act relating to making applications for Rent Repayment Orders.
 - Article 12 of the new schedule 13A in the 2004 Act.
2. The Code for Crown Prosecutors which gives guidance to prosecutors on the general principles to be applied when making decisions about prosecutions.

3. Dover Districts Council Enforcement Policy (incorporating the Private Sector Housing Enforcement Policy)

Principles in the Statutory Guidance for Financial Penalties.

This explains that the FP should; reflect the severity of the offence, the culpability and track record of the offender, the harm caused to the tenant, the punishment of the offender, to deter the offender from repeating the offence, to deter others from committing similar offences and to remove any financial benefit the offender has from offending.

The five Stages in ‘Determining the Level of Financial Penalty’.

Stage 1: Banding the offence. The initial FP band is decided following the assessment of two factors. The scores are multiplied to give a penalty score which sits in one of four penalty bands;

- Culpability of the landlord; and
- The level of harm that the offence has had.

Stage 2: Amending the penalty band based on aggravating factors.

Stage 3: Amending the penalty band based on mitigating factors.

Stage 4: A Penalty Review. To review the penalty to ensure it is proportionate and reflects the landlord’s ability to pay.

Stage 5: Totality Principle. A consideration of whether the enforcement action is against one or multiple offences, whether recent related offences have been committed and ensuring the total penalties are just and proportionate to the offending behaviour

Stage1: Banding the level of Offence, (there are two factors to assess)

Banding the Offence

<p>Factor 1. Culpability of Landlord (seriousness of offence and culpability)</p> <p>To consider as part of assessment</p> <ul style="list-style-type: none"> • the scale and scope of the offences, • what length of time did the offence continue for or repeat over? • what was the legislation being breached? • to what extent was the offence premeditated or planned, • whether the landlord knew, or ought to have known, that they were not complying with the law, • the steps taken to ensure compliance. • whether the landlord has previous relevant unspent housing offence related convictions (source National Landlord database), • the likelihood of the offence being continued, repeated or escalated. • the responsibilities the landlord had with ensuring compliance in comparison with other parties 	<p>Assessment: The landlord is to be assessed against four levels (low, moderate, high or significant) of culpability:</p> <p>Significant - Where the offender deliberately or intentionally breached, or flagrantly disregarded, the law.</p> <p>High – Landlord had actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken.</p> <p>Moderate - Offence committed through act or omission which a landlord exercising reasonable care would not commit</p> <p>Low - Offence committed with little fault, for example, because: Significant efforts were made to address the risk although they were inadequate on this occasion There was no warning/circumstance indicating a risk Failings were minor and occurred as an isolated incident</p>
<p>Factor 2 Level of Harm (for tenant, community)</p> <p>To consider as part of assessment</p> <ul style="list-style-type: none"> • Circumstances or vulnerabilities or actual discrimination against the tenant or tenants. (age, illness, language, ability to communicate, young children, disabilities or in relation to any protected characteristic (Equalities Act 2010) • Tenant’s views about the impact that the offence has had on them. • The extent to which other people in the community have been affected, for 	<p>Assessment: The landlord is to be assessed against four levels (low, moderate, high or significant) of harm or consequence:</p> <p style="text-align: center;">Significant.</p> <ul style="list-style-type: none"> ▪ Serious adverse effect(s) on individual(s) and/or having a widespread impact ▪ Significant risk of an adverse effect on individual(s) – including where persons are vulnerable ▪ Significant disregard of Regulator or legitimate industry role with significant deceit

<p>example, because of anti-social behaviour, excessive noise and damage to adjoining properties.</p> <ul style="list-style-type: none"> • was more than one other household affected, • The level of actual or potential physiological or physical impact on tenant(s) and third parties? • What regulation, legislation, statutory guidance or industry practice governed the circumstances of the offence? • has the level of trust been breached and have landlord actions impacted on sector? 	<p style="text-align: center;">High</p> <ul style="list-style-type: none"> ▪ Adverse effect on individual(s) (not amounting to significant) ▪ High risk of an adverse effect on individual(s) or high risk of serious adverse effect, some vulnerabilities. ▪ Regulator and/or legitimate industry substantially undermined by offender's activities ▪ Consumer/tenant misled
	<p style="text-align: center;">Moderate</p> <ul style="list-style-type: none"> ▪ Moderate risk of an adverse effect on individual(s) (not amounting to low risk) ▪ Public misled but little or no risk of actual adverse effect on individual(s)
	<p style="text-align: center;">Low</p> <ul style="list-style-type: none"> ▪ Low risk of an adverse effect on individual(s) ▪ Public misled but little or no risk of actual adverse effect on individual(s)

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Scoring matrix to determine the level of fine.

Scoring Matrix for Financial Penalty					
FACTORS					
Level of Culpability (seriousness of offence)	Significant	4	8	12	16
	High	3	6	9	12
	Moderate	2	4	6	8
	Low	1	2	3	4
Level of Harm		Low	Moderate	High	Significant

Financial Penalty Banding and Penalty Scores

Penalty Band	Band 1				Band 2				Band 3				Band 4			
Penalty Score	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Financial Penalty	£250	£500	£750	£1000	£2000	£4000	£6000	£8000	£10,000	£12,000	£15,000	£18,000	£20,000	£23,000	£26,000	£30,000

Stage 2: Amending the penalty band based on aggravating factors.

Objective: to consider aggravating factors of the offence that may influence the FP. A significant aggravating factor may allow the FP to be increased by a FP point.

Example aggravating factors:

- Previous convictions, having regard to;
 - a) The nature of the offence to which the conviction relates and its relevance to the current offence; and
 - b) The time that has elapsed since the conviction (is conviction spent)?
- Motivated by financial gain, profited from activities.
- Deliberate planned concealment of activity resulting in offence and obstructive nature of landlord towards investigation
- Established evidence of longer term impact on the (wider) community as a consequence of activities.
- Role within the private rented sector and familiarity with responsibilities and current level of responsibility with managing and letting private rented properties.
- Refusal to accept offer of, or respond to LHA advice regarding responsibilities, warnings of breach or learned experience from past action or involvement of LHA or other Regulatory Body.
- Any further factor that can be deemed of sufficiently aggravating nature that is not covered above or within the culpability and harm banding factors.

Stage 3: Amending the penalty band based on mitigating factors

Objective: to consider any mitigating factors and whether they are relevant to the offence. A significant mitigating factor may allow the FP to be decreased by a FP point.

Example mitigating factors:

- No evidence of previous convictions or no relevant/recent convictions
- Voluntarily steps taken to remedy problem
- High level of co-operation with the investigation, beyond that which will always be expected
- Good record of maintaining property and compliance with legislation, statutory standards and industry standards
- Self-reporting, co-operation and acceptance of responsibility
- Mental disorder or learning disability, where linked to the commission of the offence
- Serious medical conditions requiring urgent, intensive or long-term treatment where linked to the commission of the offence.
- Age and/or lack of maturity where it affects the responsibility of the offender
- Any further factor that can be deemed of sufficiently mitigating nature that is not covered above or within the culpability and harm banding factors.

Stage 4: A review of the financial penalty to ensure that the case can be made and that the chosen approach is proportionate:

Step 1: to check that the provisional assessment of the proposed FP meets the aims of the Crown Prosecutions sentencing code:

- Punishment of offender
- Reduction of/stopping crime
- Deterrent offender or for other potential offenders
- Reform of offender
- Protection of public
- Reparation by offender to victim(s)
- Reparation by offender to community
- Remove any financial benefit the offender may have obtained as a result of committing the offence.

Step 2: to check that the proposed FP is proportionate and will have an appropriate impact.

Local authorities should use their existing powers to, as far as possible, make an assessment of a landlord's assets and any income (not just rental income) they receive when determining an appropriate penalty by making an adjustment to the financial penalty band. The general presumption should be that a FP should not be revised downwards simply because an offender has (or claims to have) a low income. Similarly, if a landlord with a large portfolio was assessed to warrant a low FP, the FP might require adjustment to have sufficient impact, and to conform to sentencing principles.

Part 6, Schedule 16 of the Crime and Courts Act 2013 permits the value of any assets owned by the landlords, e.g. rental property portfolio, to be taken into account when making an assessment and setting the level of penalty. The FP is meant to have an economic impact on the landlord, removing reward for criminal activities and acting as a deterrent to bad practice.

In setting a financial penalty, the LHA may conclude that the offender is able to pay any financial penalty imposed unless the offender has supplied any financial information to the contrary. It is for the offender to disclose to the LHA such data relevant to his financial position as will enable it to assess what he can reasonably afford to pay. Where the LHA is not satisfied that it has been given sufficient reliable information, the LHA will be entitled to draw reasonable inferences as to the offender's means from evidence it has heard and from all the circumstances of the case which may include the inference that the offender can pay any financial penalty.

Process: The offender will be asked to submit relevant information as part of the process and the request for financial information will be incorporated into the notes on the "notice of intended action", the first step with issuing a FP notice.

Stage Five: Totality principle

Objective: Where the offender is being considered to be issued with more than one financial penalty, the LHA should consider the Sentencing Council guidance “Offences Taken into Consideration and Totality - Definitive Guideline”. Where separate financial penalties are imposed the LHA must be careful to ensure that there is no double-counting. Section 249A of the 2004 Act (amended) states that ‘only one financial penalty under this section may be imposed on a person in respect of the same conduct’. The 2016 Act does permit the LHA to issue a FP and also apply for a RRO. Where the FP is issued the FTT must award the maximum RRO.

“The total financial penalty is inevitably cumulative”. The LHA should determine the financial penalty for each individual offence based on the seriousness of the offence and taking into account the circumstances of the case including the financial circumstances of the offender so far as they are known, or appear, to the LHA. The LHA should add up the financial penalties for each offence and consider if they are just and proportionate.

If the aggregate total is not just and proportionate the LHA should consider how to reach just and proportionate financial penalties. There are a number of ways in which this can be achieved.

Examples:

- where an offender is to be penalised for two or more offences that arose out of the same incident or where there are multiple offences of a repetitive kind (management offences or breach of conditions), especially when committed against the same person, it will often be appropriate to impose for the most serious offence a financial penalty which reflects the totality of the offending where this can be achieved within the maximum penalty for that offence. No separate penalty should be imposed for the other offences;
- Where an offender is to be penalised for two or more offences that arose out of different incidents, it will often be appropriate to impose a separate financial penalties for each of the offences. The LHA should add up the financial penalties for each offence and consider if they are just and proportionate. If the aggregate amount is not just and proportionate the LHA should consider whether all of the financial penalties can be proportionately reduced. Separate financial penalties should then be passed.
- Where a LHA has determined that it will apply for a RRO within the 12 month deadline the FP should be reviewed to ensure the total penalty is proportionate as guided by Stage 4. The FP may be adjusted accordingly knowing that, *if successful*, the RRO award will be the maximum.

Setting the Rent Repayment Order (RRO) for a Landlord.

A tenant or a LHA may individually apply to a FTT for a RRO award in respect of their rent payments within 12 months of an offence. Under section 73 (7)(iii) and section 96 (7)(iii) of the 2004 Act and section 42 (2)(b) of the 2016 Act; the LHA is required to stipulate, in the notice of intended proceedings, how much the order for repayment of rent is. The level of rent relates to a defined period of 12 months in the period leading up to the offence or during the 12 month period whilst the offence was being committed. The local investigation will determine the levels of rent paid. A LHA has no control over the level of rent a tenant may apply for.

The Government have advised that the RRO should ensure it addresses the following factors; punishment of the offender, the recipient of any recovered rent, deter the offender from repeating the offence, deter others from committing similar offences and remove any financial benefit the offender may have obtained as a result of committing the offence. LHA must have regard to the statutory guidance issued under section 41(4) of the 2016 Act when exercising their functions in respect of RRO.

Where a conviction has been achieved the LHA will apply to the FTT for the maximum rent repayment, within a 12 month period. Section 46 of the 2016 Act states this is the level that must be awarded to either a tenant (except for section 72(1) or 95(1) offences) or a LHA where the landlord has been convicted or a FP issued in relation to that offence. In these cases there is no discretion within "Determining the Penalty".

If there is no conviction or a FP is not issued then the Council will apply to the FTT for the maximum rent repayment when a RRO is applied for. . If a FP is to be issued, the penalty point/ banding first determined will be reviewed under Stage 5 to ensure that the Totality Principle is met. This aims to ensure that the total penalties are just and proportionate to the offending behaviour.

The legislation places the ultimate decision for determining the financial award under a Rent Repayment Order with the FTT in line with section 74 and 97 of the 2004 Act and sections 44 and 45 of the 2016 Act. The FTT must take into account; the conduct of the landlord, the financial circumstances of the landlord, and whether the landlord has at any time been convicted of an offence to which this Chapter (Part 2 Chapter 4 of the 2016 Act) applies. It is felt that not making the application for the maximum award would undermine the discretion of the FTT.

Appeals

A person issued with a FP has a right of appeal to the First Tier Tribunal (Para 10 of Schedule 13A of the 2016 Act)

A person placed on the DRL has a right of appeal to the First Tier Tribunal (Section 32 of the 2016 Act).

A person aggrieved by the decision of the FTT in relation to the making of a rent repayment order may appeal under the provisions of Part 2 Chapter 5 of the 2016 Act.

NOTE

Financial Penalty Process and Right for Person to make Representations..

Before imposing a financial penalty on a person under section 249A of the 2004 Act the LHA must, within 6 months of the date of the offence, give the person notice of the authority's proposal to do so (a "notice of intent"); incorporating why and the level of fine. A person in receipt of the notice of intent can make written representations within 28 days. Subsequently the LHA must decide whether to issue a financial penalty and the amount and to do so must issue a final notice.

Similarly, section 42 of the 2016 Act requires that the LHA must first serve a notice of intended proceedings on the landlord. He can then make written representations within 28 days of the date of service to the LHA about the proposed RRO

The landlord has the right to make representations and any representation must be duly considered. The LHA will provide a response within 21 days (no statutory time period) with a decision notice stating whether the penalty will be withdrawn, varied or upheld.

All communications for representations made against the intended FP or RRO are to be written and sent to:

**Private Sector Housing Manager
Dover District Council
White Cliffs Business Park
Dover
CT16 3PJ**

Telephone: 01304 872397
email to: privatehousing@dover.gov.uk

Dover District Council

Private Sector Housing Enforcement Policy

1. Aim

The primary enforcement role of the Private Sector Housing (PSH) service is to maintain and improve the housing conditions in Dover District (This excludes properties owned by the Council). It endeavours to achieve this through advice, information and financial assistance. Where this approach fails or is not appropriate and it is necessary to protect the health safety and welfare of persons then the service will take the appropriate enforcement action.

The aim of this policy is to:

- Set out the criteria and priorities we will use when enforcing legislation so it is transparent and clear to the public.
- Sets out our policy in respect of charges that may be imposed for enforcement.
- Ensure our enforcement is consistent, fair, proportionate and targeted.
- Ensure it is consistent with the aims and objectives contained in the Private Sector Housing Strategy 2010-15 and the Empty Property Strategy 2010-15.

2. Scope

This enforcement policy covers the following functional areas:

- Licensing of Houses in Multiple Occupation
- Enforcing minimum Housing standards (HHSRS) to prevent injury and ill health,
- The redress scheme for letting agency and management work

- Bringing empty homes back into use,
- Licensing of caravan sites and mobile homes
- Harassment and Illegal eviction of tenants

3. Authorisations

In accordance with the Council's constitution, the Director for Finance, Housing and Community has a duty to appoint officers with suitable qualifications, experience and level of competency to enforce, or, to ensure that appropriate officers are trained to the required level to undertake an enforcement role.

Authority to exercise executive functions in relation to Private Sector Housing has been delegated to the Private Sector Housing Manager as detailed in the Councils Constitution. These powers have then been further delegated where considered appropriate and necessary.

4. General Principles

When carrying out enforcement action it is important that the Council works within the statutory framework set out and that it follows best practice and procedure.

In particular, the Council is committed to acting in a fair and consistent manner and has adopted this enforcement policy as part of this commitment. When exercising its enforcement functions, the Council will act in such a way that is

- Transparent
- Accountable
- Proportionate
- Consistent
- Targeted only at cases where action is needed

Relevant advice/guidance and legislation underpinning this strategy includes

- Dover District Councils Overarching enforcement strategy
- DCLG document "Housing Health and safety Rating System; Enforcement Guidance".
- Regulator's Code
- Human Rights Act 1998
- Police and Criminal Evidence Act 1984
- Criminal Procedure and Investigations Act 1996

- Regulation of Investigator Powers Act 2000
- Data Protection Act 1998
- Freedom of Information Act 2000
- The Protection of Freedoms Act 2012
- The Housing Acts 2004 and 1985
- Local Government Miscellaneous Provision Act 1976
- The Building Act 1984
- The Environmental Protection Act 1994
- The Caravan Site and Control of Development Act 1960
- The Caravan Sites Act 1968
- Mobile Homes act 1983 and 2013
- Protection from Eviction Act 1977
- The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 became operative on 1st October 2015
- The Redress Schemes for lettings Agency work and Property management Work (Requirement to Belong to a Scheme etc.) (England) Order
- Housing And Planning Act 2016
- DCLG Guidance for Local Housing Authorities “Civil Penalties under the Housing and Planning Act 2016”
- DCLG Guidance for Local Housing Authorities “Rent repayment orders under the Housing and Planning Act 2016”
- Other legislation may be used occasionally.

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5. Interventions and Enforcement

After considering all relevant information one or more of the following courses of action shall be taken:-

a) Informal action

b) Formal action

- Statutory notice
- Simple caution
- Prosecution
- Works in default
- Penalty Charge Notice

- Rent Repayment Order
- Banning Order
- Register landlord on Rogue Landlord Database
- Compulsory purchase of property
- Empty Dwelling Management Order
- Management order

Not all of these options are available in every case. This underlines the need to consider powers available under each piece of legislation individually.

In making any decision on enforcement, officers will consider the following criteria: -

- The seriousness of any offence
- The owner/landlords past history
- Consequences of non-compliance
- The known or likely public benefit of the chosen enforcement action
- The willingness of the owner/landlord to carry out works and the confidence in them
- The likely ability of any witnesses to give evidence and their willingness to co-operate
- The Crown Prosecution Service's Code of Practice for Crown Prosecutors
- The risk of any hazard to health (see details below)
- Any relevant guidance or case law

The primary legislation used by PSH is the **Housing Act 2004** and is mainly used to remove hazards in a property that puts occupiers at risk of injury or ill health. This legal provision applies to all property and tenures including owner-occupiers. Hazards are subject to a statutory risk assessment that determines whether the hazards are classified as a Category 1 or 2. A category 2 hazard is less serious than a Category 1 hazard.

The Council are under a legal duty to take formal action in the case of a category 1 hazard. The Council do not have a duty to take action with category 2 hazards but they do have the power to take action. The decision in deciding which type of notice or order to serve will depend upon a number of factors. These factors are contained in DCLG document "Housing Health and safety Rating System; Enforcement Guidance" and is summarised in paragraph 5.3.

The Council may take enforcement action for category 2 hazards and will do so where it is felt appropriate. In making this decision we will take the following matters into account: -

- The wishes of the occupier
- Whether there are high scoring category 2 hazards
- Where there are multiple hazards;
- Whether the occupants are in the high risk group in relation to any hazards present
- Whether it is reasonably practicable to remedy the hazard;
- Whether the defects have a significant effect on the occupants well being
- Whether the landlord had a record of poor maintenance
- Whether the landlord is accredited with a recognised accreditation scheme
- Whether the landlord has agreed to remedy the defects
- Whether the property or person is within one of the Council priorities;
- Whether the hazard is likely to become more serious if not dealt with, for example, damp can often lead to the property fabric deteriorating.

As a general rule a Category 2 hazard scoring more than 500 points under the HHSRS statutory assessment will be considered a high scoring hazard.

5.1 INFORMAL ACTION

If appropriate, the Council will normally try to enforce in an informal manner. This would involve the officer drawing the matter to the attention of the owner, manager or responsible person in the form of a letter, e-mail or telephone. This letter will normally list any hazards or concerns or deficiencies found and arrange for a follow up visit to discuss the matter with the owner, manager and occupiers. If this informal approach does not result in works or action being completed or insufficient progress is made or information requested is not supplied then the Council will treat the matter in a formal way.

Informal action is appropriate where;

- The act or omission is trivial in nature and it can be simply remedied.
- Confidence in the individual/businesses management is high.
- Any hazards pose a minimal risk to health.
- There is insufficient evidence for formal action at the time (although formal action may follow at a later date.
- The views or circumstances of the occupiers or owners provide compelling reasons why formal action should not be taken.
- There are no concerns that the tenant may be subject to retaliatory eviction.

5.2 FORMAL ACTION

Where there is a category 1 hazard, the Council are under a legal duty to appropriate formal action under the Housing Act 2004.

Formal action will be taken when:

- Informal action has not resulted in compliance or progress. See **Appendix 1** detailing the PSH service standards;
- There is a serious risk to an occupier or member of the public, this would include a category 1 hazard;
- An owner or landlord is known to have a history of non compliance with statutory requirements;
- There is a belief that the tenant may be subject to retaliatory eviction
- A serious offence has been committed.
- The consequences of non-compliance are significant.
- The likely ability of any witnesses to give evidence and their willingness to co-operate in the case of a prosecution
- It is felt necessary or it is a statutory requirement to inform the owner formally that there are works that ideally should be carried out. This will normally be in the form of a Hazard Awareness Notice.
- Where an empty property is assessed as being a case for priority action as prescribed in our Empty Homes Strategy. See **Appendix 2**.

5.3 Statutory Notices

Most notices served by PSH are under the Housing Act 2004 to deal with serious hazards. The main notices used are:

- Improvement Notice (sections 11 and 12)
- Prohibition Order (sections 20 and 21)
- Emergency Remedial Action (sections 40 and 41)
- Emergency Prohibition Order (sections 43)
- Hazard Awareness Notice (sections 28 and 29)
- Suspended Improvement or Prohibition notice/order

The table on the following page provides a guide to the likely action the Council will take under the Housing Act 2004. However each case will be considered individually.

Other notices under other legislation may also be used. Examples of other legislation are the Building Act 1984, Environmental Protection Act 1990.

Notice type	Category 1 Hazard	Category 2 Hazard
Improvement Notice	Most common notice that will be used for Category 1 hazards. Although it's mainly used for rented accommodation, it may also be used for properties with owner-occupiers where there is a concern for the health of the occupants. An example would be in the case of a fire hazard in a multiple occupied property (flats).	This notice will often be used to require works to deal with category 2 hazards as part of a notice to remedy category 1 hazards. May also be used where there are high scoring category 2 hazards that may affect the health of the occupants or are likely to be a category 1 hazard in the future if the works are not carried out.
Suspended Improvement Notice	This may be used occasionally. For example where the occupier refuses to have works carried out or the work is not practical with the current occupiers.	This may be used occasionally. For example where the occupier refuses to have works carried out.
Hazard Awareness Notice	Not normally used for serious hazards except where the owner occupies the property. In this situation the owner is in full control whether to remedy the hazard and simply notifying the owner of the hazard is believed to be sufficient formal action.	This notice is often used where there are recommended works to be carried out but they are not serious enough to warrant an Improvement Notice. May also be used for a high scoring hazard if an owner occupies the property.
Prohibition Order	Mainly used where improvements are not practical or where it's more practical to prohibit certain age groups. Main use is for dealing with overcrowding. It may also be used to prohibit the use of unsuitable parts of a property such as cellars and basements.	This order is not normally used for Category 2 hazards.
Suspended Prohibition Order	A Suspended Prohibition Order may commonly be used where an owner occupies the property or in cases of overcrowding.	This order is not normally used for Category 2 hazards.
Emergency Prohibition Order	Only used in very exceptional cases. An Emergency Prohibition order will be served where there is an imminent risk to health or injury and prohibiting the use of the property is believed to be the best solution.	This order is not normally used for Category 2 hazards.
Emergency Remedial Action	This will only be used in exceptional cases. There has to be an imminent risk to health or injury. The Council can carry out Works immediately and recover their costs from the owner.	This action is not normally used for Category 2 hazards.

5.4 Works in default

Under certain pieces of legislation the Council is empowered to carry out works in default and recover the costs. Works in default may be carried out where:

- A notice has not been complied with within the specified time
- There is no prospect of the person responsible carrying out the work, e.g. the person is absent or infirm
- Speedy abatement is required, e.g. where there is an imminent risk of injury or ill health
- the circumstances are such that works in default are a more appropriate or effective remedy than prosecution
- The problem persists after prosecution.
- Where a landlord has not complied with a 28 days remedial notice under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 the Council must carry out works in default

Normally a 20% charge will be made on works in default to cover the Councils administration costs.

5.5 Prosecution

Prosecuting someone is a serious matter and will be considered carefully on a case-by-case basis. When considering prosecution officers must follow the guidance in the [Code of Practice for Crown Prosecutors](#) . For most of the offences under the Housing Act 2004 the decision whether to prosecute will be subject to **Appendix 5** attached – ***Determining the Penalty for Offences under the Housing Act 2004.***

Where there are offences that have been committed not covered by appendix 5, officers may consider that prosecution is an appropriate way of dealing with the matter when:

- A simple caution is not appropriate or the person accused has refused to accept the offer of a simple caution; or
- There is a risk to public health and safety or of environmental damage as a consequence of the breach; or
- The breach was as a result of a deliberate act or following recklessness or neglect; or
- The approach of the offender warrants it, e.g. repeated breaches, persistent poor standards; or
- A legal notice or order has not been complied with or no reasonable progress made in relation to its requirements; or
- Obstruction of an officer in the course of their duty; or
- When a person continues to commit offences despite being informed by the Council of these; or
- The refusal or provision of false information.

Please note this is not an exhaustive list and each case will be considered on its individual merits.

The initial decision to prosecute will normally be taken by the Private Sector Housing Manager in consultation with the solicitor of the Council and the Strategic Housing Manager.

5.6 Penalty Charges Notices

Under some legislation, the Council can serve a Penalty Charge Notice. These are:

- **The Redress Schemes for lettings Agency work and Property management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014**
- **The Smoke and Carbon Monoxide Alarm (England) Regulations 2015**
- **The Housing Act 2004 as amended by the Housing and Planning Act 2016**

5.61 The Redress Schemes for lettings Agency work and Property management Work

Under the redress scheme the penalty charge will normally be £5,000 for any contravention but on representation this charge may be reduced or in exceptional cases be quashed. Some brief guidance has been provided on reasons to reduce the penalty charge which includes taking account of turnover of the business or other extenuating circumstances. This charge amount is in accordance with “Guidance on the Redress Scheme Improving Rented Sector” issued in March 2015 by DCLG.

The landlord can request the local authority to review the penalty charge. It is recommended that any representations that are made should be considered jointly by any two of the following officers the Private Sector Housing Manger, the Head of Strategic Housing or the Director of Finance, Housing and Community. A final appeal can be made by the landlord to the First Tier Tribunal.

5.62 The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Under these regulations, a penalty charge of up to £5,000 can be made. Regulation 13 requires a local Housing Authority to prepare and publish a statement of principles which it proposes to follow in determining the amount of penalty charge. **Appendix 4** details the Councils Statement of Principles in this matter.

Where the Council undertake remedial action, the type of smoke detection fitted will if reasonable and practical meet the ideal standard. Normally the ideal standard would meet the minimum requirements contained in British Standard 5839- part 6:2013

5.63 Housing Act 2004 as amended by the Housing and Planning Act 2016

The Housing and Planning Act 2016 introduced new powers for local authorities to tackle rogue landlords. These new powers include;

- Civil penalties of up to £30,000
- Extension of Rent Repayment Order
- Banning orders for the most prolific offenders
- Database of rogue landlords/property agents

The Council has approved a policy for determining when to issue a penalty notice and the amount of penalty to be charged; when to apply for a Rent Repayment Order; when to put a landlord the database of rogue landlords and when to apply for a banning order.

This policy can be found at **appendix 5; *Determining the Penalty for Offences under the Housing Act 2004.***

5.7 OVERCROWDING

Wherever possible the Council will resist taking action that would lead to homelessness but will seek to reduce overcrowding using suspended notices that relies on a voluntary reduction in the occupation of the dwelling. We will work with the Council's Homelessness team where enforcement action may lead to a family moving out of their accommodation.

In taking action, we will consider:

- The impact of the overcrowding upon the health and safety of vulnerable adults and children's living conditions.
- Whether the occupants are being exploited and we will take this into account when deciding what action to take.
- The wishes of the occupier.

Where there is a serious hazard of overcrowding, a suspended prohibition notice will normally be served. This will require the occupation of the property to be reduced by the occupiers leaving the property when they choose to. The Notice will then become fully operative once the property is no longer overcrowded and it would be an offence if the property became overcrowded by new occupiers.

5.8 Priorities for Enforcement

Normally we will not prioritise owner-occupiers for action as statistically these homes are safer and the owner has far greater control and power to remedy any hazards in the property. A private tenant would not have this control or power. However where the Council knows there is a serious hazard in an owner occupied property we may have to take formal action in accordance with our statutory duty. In most cases this will simply be a Hazard Awareness Notice but an Improvement or Prohibition Notice may be served if this is needed to protect existing or future occupants.

To ensure that we meet our policy and enforcement objectives effectively, we will from time to time need to target our enforcement activity to specific subjects. For example this may be:

- Concentrating our action on specific roads or;
- On particular individuals or organisations who persistently commit offences or their activities result in the need for us to work proactively to meet our objectives or;
- On specific types of properties for example Houses in Multiple Occupation or empty homes;
- The need to work with partners on specific enforcement activities.

5.9 Charging Policy

The Housing Act 2004 allows Councils to charge for taking enforcement action that results in service of a notice. The Council will recover our costs when statutory action is taken including the full costs of an officer's time, overheads and any relevant expenses such as specialist reports. Current charges are attached as **appendix 3** and these will be updated annually.

There will be discretion to waive the charge when it is not reasonable to expect a person to pay for charges for the enforcement action taken i.e. where it is very clear that the owner is not at fault or that the reason for serving the notice was outside the control of the owner.

Where the notice is fully complied with within the time allocated by the Council, then the costs charged relating to officer time and administration will be waived. Any other costs such as the obtaining of specialist reports will be fully recovered by the Council. Where a charge for enforcement action is levied, it will be registered as a local land charge.

Normally a 20% charge will be made on works in default to cover the Councils administration costs.

6. Policy Monitoring

To ensure compliance with this policy, the enforcement activities of the Private Sector Housing Service will be monitored regularly by the Private Sector Housing Manager and are subjected to a regular audit process.

The Private Sector Housing Manager will review this policy annually.

7. Training and Development

Appropriate resources will be made available for training officers to enable them to successfully carry out their duties within this policy. All officers will have recognised relevant qualifications and completed training on the Housing, Health and Safety Rating System. Ideally senior enforcement officers will be professionally qualified and undertake Continual Professional Development.

8. Equality impact Assessment

This policy aims to promote the Council's objectives of improving environmental quality, promoting prosperous communities, health and well-being.

Care has been taken to ensure that application of these policies will not result in discrimination against any of the equalities groups. This document is covered by the Equalities Impact Assessment (EIA) for the overarching Corporate Enforcement Strategy.

9. Complaints against our Service

If you are dissatisfied with the service you receive please let us know. We are committed to providing quality services and your suggestions and criticisms about any aspect of our service will help us to improve. We will deal with all complaints in the strictest confidence. Wherever possible we will attempt to resolve your complaint informally.

Initially you should make representations through the case officer to try to resolve your concern. If you are unable to resolve this matter with the case officer you should contact the Private Sector Housing Manager.

If you are still dissatisfied, the Council has in place a Corporate Complaints procedure.

If you are still unhappy you can discuss your complaint with your local ward Councilor, MP or can complain to the Local Government Ombudsman.

How to Contact us

In the first instance please use the telephone number given on any correspondence we send and speak to the case officer dealing with the matter or contact;

Robin Kennedy, Private Sector Housing Manager,
Dover District Council,
White Cliffs Business Park,
Dover CT16 3PJ
Tel: 01304 872221 or E-mail: robin.kennedy@dover.gov.uk

Our complaints officer can be contacted

Professional Standards Officer
Dover District Council
White Cliffs Business Park
Dover CT16 3PJ

Tel: 01304 872322 or email: complain@dover.gov.uk

Appendices

Appendices 1	Service Standards
Appendices 2	Priority system for empty homes
Appendices 3	Charging Policies
Appendices 4	Statement of Principles for penalty charge for the Smoke and Carbon Monoxide Alarm (England) Regulations 2015
Appendices 5	Determining the Penalty for Offences under the Housing Act 2004

Appendix 1

SERVICE STANDARDS

Response to communication

This is to be determined by Council- wide standards.

Enforcement/request for service

1. All requests for service to be acknowledged within 7 working days by letter, telephone or e-mail.
2. Where a request for service is deemed very urgent with an imminent risk to health or injury, a visit to the premises should be made within 24 hours. If upon inspection it is confirmed there are hazards giving rise to a serious imminent risk to health the landlord or owner are to be informed as soon as practical and formal action taken within 4 days.
3. For all other requests for service, the complainant may be required to complete a questionnaire giving details of their problems and their landlord. If the questionnaire is not returned within 14 days a reminder letter will be sent. If following a further 14 days we have still not received a reply the case will normally be closed by the Private Sector Housing Manager. Wherever possible the complainant will be telephoned before the case is cancelled.
4. If a questionnaire is not required, or has been returned, the complainant will be contacted to make an inspection of the property within 10 working days.
5. Following an inspection of the property and in all cases not mentioned in section 2 above the council will write to the complainant within 10 working days informing them of the action the council are taking in the matter. The exception to this is where no action is required and the tenant will be given advice at the time of inspection.
6. Where an officer determines that works may be required, the council will write to the landlord and tenant within 10 working days of the inspection requesting a formal inspection¹ of the property with the landlord. This inspection will normally be arranged within 10 working days.

¹ This formal inspection is required by the Housing Act 2004.

7. A letter will be sent within 10 working days of the formal inspection to the landlord that identifies the hazards, works required and timescales to complete them. A copy will be sent to the tenant any other interested parties.
8. Where works or action is required by the council the matter will normally be reviewed by a re-visit or in some cases by contacting the complainant within the following time periods.
 - For all properties having a category 1 hazard the reviews will take place every 6 weeks.
 - For all properties having no category 1 hazard the reviews will take place every 8 weeks.

Where no adequate progress has been made, the owner shall receive written confirmation of the results within 10 days of the review. The tenant will be informed either in writing or verbally.

9. If there appears to be no satisfactory progress then legal action may be taken. This will usually be by the service of a statutory notice but this will depend upon all legal formalities such as ownership of the property being satisfied. The time scale allowed before progress is deemed unsatisfactory cannot be prescriptive but the following guidelines should be followed.
 - In the case of properties having category 1 hazards a formal notice would normally be served within 12 weeks of the formal inspection. In the case of properties having high scoring category 2 hazards, a formal notice would normally be served within 20 weeks of the formal inspection.
 - Where there is a concern that the tenant may be subjected to retaliatory eviction, the service of an Improvement Notice will be served as soon as possible.
10. Where a formal notice has been served, reviews will take place within 5 working days of any start date and completion date contained in the notice. The results of any review will normally be informed to the landlord in writing within 5 working days.
11. Where the notice has not been complied with then a prosecution and/or works in default will be considered. If action is deemed to be necessary this would normally be instigated within 6 weeks of the contravention. Any such action is subject to legal considerations, being proportional and in the public interest so timescales cannot be prescriptive.

Appendix 2

Empty Homes Priority System for Action

A priority list of known empty residential properties will be calculated, that reflects the length of time the property has been empty and the impact the property is having on the local environment & community.

The Council will tackle vacant residential property in priority order. The properties with the highest score will be dealt with first.

Vacant properties will be surveyed regularly to enable their points to be adjusted to take into account changes in circumstances.

Properties subject to new complaints will be surveyed within 14 working days. The points will be calculated in accordance with the table below to establish their priority. The points are accumulative. For example a property empty for eight years will be awarded 30 points for being empty for that length of time.

<u>Property Description</u>	<u>Points</u>
Vacant for over 2 Years.	15
Vacant for over 5 Years. An additional	15
Vacant for over 10 Years. An additional	15
Vacant for over 15 Years. An additional	15
Causing serious damage to adjoining property	15
Falling into serious disrepair	15
Property in a high profile area. (Regeneration areas, town centres, major roads and conservation areas)	10
Becoming an eyesore to the area	10
Attracting rubbish & fly tipping	10
Receiving complaints regarding the property	10
Attracting vandalism and anti-social behaviour	10
No real attempt to sell or re-let after 2 years	5
No sign of refurbishment after 2 years	5

Low Scoring Properties – up to 40 pts

This score could reflect an empty property that the owner is in the process of renovation, alterations or sale. Or there is a probate or other legal issues.

These properties are not causing a nuisance and are secure and in a good state of repair. Properties that fall into this category will only require minimal monitoring to ensure they do not deteriorate or remain empty long term.

Medium Scoring Properties – 41 to 65 pts

This score reflects empty properties that are falling in to a state of neglect. Attempts to sell or re-let the property have been unsuccessful or not pursued. The owner has not maintained the appearance of the property. They are now beginning to become an eyesore, cause a nuisance, attracting rubbish, or anti-social behaviour and action is needed to prevent them from falling into serious disrepair. The Empty Property Officer, who will attempt to negotiate with the owner to try and prevent further deterioration in their condition and bring them back into use and occupation, will closely monitor these properties. Planning and Public Protection enforcement powers will also be used at this stage, if necessary.

High Scoring Properties – over 65 pts

These properties will normally have been empty for many years, are causing a nuisance to the local community and are eyesores and probably in a prominent position. They are at risk of attracting vandalism, arson, fly tipping and are in a state of disrepair and/or derelict.

Priority and Urgent Properties.

These will be properties that in urgent need of attention by the Council. These will be properties that are, insecure, unsafe and dangerous and will be secured and made safe as soon as possible. Once secure the property will be rescored and dealt with in priority order.

Appendix 3

Charges for Notices and HMO licensing

Introduction

Under section 49 of the Housing Act 2004 charges can be made for work undertaken in respect of the Housing Act 2004 for the service of statutory notices and the licensing of Houses in Multiple Occupation. These charges can include the costs for officer time; specialist reports such as electrical or structural reports and legal costs.

The Council will only seek to recover costs that have been reasonably incurred in administering the service and cannot be used to make profit or used as a penalty. Where owners act responsible and co-operate then charges may be reduced to reflect this. Charges may also be reduced or waived in exceptional circumstances but this is at the discretion of the Private Sector Housing Manager and any request must be put in writing.

Charges for service of Statutory Notices under the Housing Act 2004

These charges are for 2017/18 and are subject to annual increases

Notice Type	Officer time costs*	Specialist reports costs	Possible Reduction
Hazard Awareness	No cost	Charge made for all costs	None
Improvement, Prohibition,	£370 charge for simple notice; £540 for standard notice; £650 for more complicated notice	Charge made for all costs and there is no reduction.	The charge is cancelled if the notice complied with within timescales contained in the Notice
Suspended Notices	Same charges apply as for Improvement and Prohibition Notices above. Plus annual charge of £50 for annual review.	Charge made for all costs and there is no reduction,	The charge is waived if works completed within 12 months of notice.
Emergency Remedial Action	£550 charge	Charge made for all costs	None
Demolition order	£610	Charge made for all costs	None

* A simple notice would typically be a notice on a one bed flat or a single hazard; a standard notice would typically be a two or three bed house or a number of hazards; a complicated notice would typically be a House in Multiple Occupation, a property with more than three bedrooms or a property with more than six hazards.

Charges for Licensing of Houses in Multiple Occupation under the Housing Act 2004

These charges are for 2017/18 and are subject to annual increases

License Type	Current Fee
Initial application fee to licence an HMO.	£700 for up to 8 habitable rooms plus £50 for each habitable room above 8
Fee for Licence renewal	£460 for up to 8 habitable rooms plus £30 for each habitable room above 8

Appendix 4

STATEMENT OF PRINCIPLES FOR DETERMINING THE AMOUNT OF CIVIL PENALTY CHARGES UNDER REGULATION 13 OF THE SMOKE AND CARBON MONOXIDE ALARM (ENGLAND) REGULATIONS 2015

1. Introduction

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 came into force on 1 October 2015. The regulations require private sector landlords from that date to have a working smoke alarm installed on every storey of their rented properties and a carbon monoxide alarm in any room containing a solid fuel burning appliance (e.g. a coal fire, wood burning stove). After that, the landlord must make sure the alarms are in working order at the start of each new tenancy.

2. Purpose of Statement of Principle

Under these regulations, Dover District Council (DDC) as an enforcing authority may impose a civil penalty of up to £5,000 on landlords who do not comply with a remedial notice that has been served on them in regard to meeting the requirements of the legislation.

The Council is required under these Regulations to prepare and publish a statement of principles and it must follow this guide when determining the amount of a penalty charge.

The civil penalty scheme is designed to encourage a landlord to comply with their duties under the legislation and to reimburse the Council in arranging remedial action in default of the landlord. The civil penalties we impose are intended to be proportionate to the level of non-compliant behaviour, the potential harm outcome, to consider any mitigating circumstances and are therefore calculated on a sliding scale.

3. Overview of the civil penalty process

The powers are contained in the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (the Regulations), being a Statutory Instrument (2015 No 1693) which came into force on 1 October 2015. The Regulations place a duty on landlords, which include freeholders or leaseholders who have created a tenancy, lease, licence, sub-lease or sub-licence. The Regulations exclude registered providers of social housing.

The duty requires that landlords ensure that:

- a smoke alarm is installed on each storey of premises where there is living accommodation
- a carbon monoxide alarm is installed in any room of premises used as living accommodation, which contained a solid fuel burning appliance.

AND for tenancies starting from 1 October 2015

- that checks are made by the landlord, or someone acting on his behalf, that the alarm (s) is/are in proper working order on the day the tenancy starts.

Where the Council believe that a landlord is in breach of one or more of the above duties, the Council must serve a remedial notice on the landlord. The remedial notice is a notice served under Regulation 5 of these Regulations.

If the landlord fails to take the remedial action specified in the notice within specified timescale, the Council can require a landlord to pay a penalty charge. The power to charge a penalty arises from Regulation 8 of these Regulations

A landlord will not be considered to be in breach of their duty to comply with the remedial notice, if they can demonstrate they have taken all reasonable steps to comply. This can be done by making written representations to the Council at the address given at the bottom of this document within 28 days of when the remedial notice is served.

Dover District Council will impose a penalty charge where it is satisfied, on the balance of probabilities, that the landlord has not complied with the action specified in the remedial notice within the required timescale.

Illustration 1: Summary illustration of each stage of the civil penalty process

Issue a remedial notice	If DDC has reasonable grounds to believe there is a breach of the requirements of regulation 4, it must serve a remedial notice on the landlord.
Breach	Failure to comply with remedial notice
Decision	Decision is made on liability for civil penalty
Payment	Payment of penalty or request for review
Review	Penalty notice is confirmed, varied or withdrawn. Review decision notice issued together with appeal information.
Payment	Payment of penalty or appeal to tribunal.
Appeal	Appeal to First Tier Tribunal, penalty notice may be quashed, confirmed or varied.
Enforcement	Enforcement action can be taken if no payment is made on time.

Each stage is explained in further detail below.

Breach

The landlord has 28 days to comply with the remedial notice. The civil penalty process starts when DDC is satisfied, on the balance of probabilities that a landlord on whom it has served a remedial notice has failed to comply with the terms of that notice (regulation 6(1)).

Decision

A decision with respect to determining the liability and calculating the penalty amount will be based on the following Consideration Framework.

Table 1: Consideration Framework

Stage 1: Determining the level of breach		
Breach	Is there a history of non-compliance within the last 5 years?	<p>Yes: Apply the Level 2 Civil Penalty Calculator</p> <p>No: Apply the Level 1 Civil Penalty Calculator</p>

Stage 2: Determining the penalty amount	
Aggravating Factors	
Aggravating factor 1	<p style="text-align: center;">Seriousness of offence.</p> <p>Does the premises have any working alarms, the length of time the property has lacked working detectors, has the tenant asked the landlord for working detectors, has the landlord refused to co-operate.</p>
Aggravating factor 2	Is the property overcrowded, is it occupied by vulnerable persons, are there other fire hazards such as poor escape, height of premises above ground level or poor electrics.

Aggravating factor 3	Dover District Council has to carry out works in default
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Stage 3: We need to determine the penalty amount. This is done using the Civil Penalty Calculator at Table 2. This calculator sets out a sliding scale of penalty amounts for each incidence of non-compliance.

The actual penalty amount will depend on the landlord’s history of compliance and the seriousness of the offence. It will also look at any aggravating factors that should justify a higher penalty. For example if aggravating factors 1 and 2 apply the penalty charge will be increased by £500. If only aggravating factor 1 applies then the penalty charge will be increased by £250.

Table 2: Civil Penalty Calculator

The Civil Penalty Calculator comprises two levels:

- The **Level 1** table should be used where there is no history of non-compliance during the last five years. The starting point for the calculation of the civil penalty is £2,000 before any additions are applied.
- The **Level 2** table should be used where you have been found to a history of non-compliance within the previous five years. The starting point for the calculation of the civil penalty is £4,000 before any additions are applied.

Where a civil penalty notice has been cancelled following a review or appeal and has not been replaced by a warning notice, it shall not be taken into account when calculating any subsequent penalty.

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Level 1: First breach		
Starting penalty amount £2000		
Aggravating factor 1:	Aggravating factor 2:	Aggravating factor 3:

Penalty increased by £250	Penalty increased by £250	Penalty increased by £500
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Level 2: Second or subsequent breach		
Starting penalty amount £4000		
Aggravating factor 1:	Aggravating factor 2:	Aggravating factor 3:
Penalty increased by £250	Penalty increased by £250	Penalty increased by £500

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Payment

Penalty charges are to be paid in full within the period specified in the penalty charge notice (this will be not less than 28 days) unless within that specified period the landlord has given written notice to DDC that the penalty charge notice be reviewed.

DDC may reduce the specified charge under an early payment option which reduces the amount of your civil penalty by 50 per cent if we receive payment in full within 14 days of the civil penalty notice being served. The reduced penalty amount and the final date by which you must pay it will be clearly shown on your civil penalty notice.

If you lodge an objection to your penalty before the deadline specified in your civil penalty notice, you will continue to be eligible for the early payment option. If you are still required to pay a penalty following the review of your notice, you will be given a fresh notice which specifies a new date by which you may pay your penalty at the lower amount.

Review

On proper notice having been given, DDC will consider any representations made by the landlord, decide whether to confirm, vary or withdraw the penalty charge notice and serve notice of its decision to the landlord. Any mitigation factors will be taken into account and the penalty charge notice may be reduced. The review will be carried out by the Private Sector Housing manager acting in consultation with either of the senior building control officer or Head of Assets & Building Control.

Appeal

DDC will be bound by the outcome of the Tribunal decision.

Enforcement

If you do not pay your penalty in full, or a review or lodge an appeal, by the specified due dates, we will commence enforcement action against you. This includes action in the civil court to recover the unpaid penalty. This action may have an adverse impact on your ability to obtain future credit and act in the capacity of a company director.

In the event that the County Court allows for the enforcement of the civil penalty the outcome of the court's determination will automatically enter the County Court Register of Judgments. Banks and other financial institutions may check this Register when deciding whether to offer credit or other services.

4. Multiple properties

A landlord within the DDC area with more than one property found to be in non-compliance with the requirements of the legislation within the previous five years, will be subject to a penalty calculation using Level 2 of the Civil Penalty Calculator if the non-compliance is encountered at other of those properties, and the non-compliance can be attributed to a general failure of the landlord's overall approach to the legislation.

5. Information regarding this statement

DDC has prepared and published this statement in accordance with its duties under regulation 13 of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015. This statement may be revised, and where this happens any revised statement will also be published. When determining the amount of a penalty charge, DDC will have regard to the statement of principles which was most recently prepared and published at the time when the breach in question occurred.

6. References in this statement

'We' or us' in this guidance mean the Dover District Council. References to 'you' and 'your' mean the relevant landlord.

'Days' means calendar days, i.e. including Saturdays, Sundays and bank holidays.

'Breach' or 'breaches' mean that the local authority is satisfied, on the balance of probabilities, that a landlord has breached the duty to comply (regulation 6) with a remedial notice served in respect to regulation 4 (within the relevant period of 28 days) and the local authority has arranged for remedial action to be taken. This is to ensure that tenants are protected by working alarms and may involve installing a required alarm, repairing an installed alarm or checking an installed alarm is in proper working order.

The legislation for the purposes of 'compliance and non-compliance' means the Smoke and Carbon Monoxide Alarm (England) Regulations 2015

'A civil penalty notice' means a notice given under regulation 8 (3) of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 that requires a landlord to pay a penalty of a specified amount

Appendix 5

Housing Act 2004 as amended by the Housing and Planning Act 2016

Determining the Penalty for Offences under the Housing Act 2004

The authority to issue a Financial Penalty and Rent Repayment Order came into force on April 6 2017 following the making of the 'The Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017' (SI 2017 No. 367) and 'The Housing and Planning Act 2016 (Commencement No. 5, Transitional Provisions and Savings) Regulations 2017'. These provisions are contained in Part 2 Chapter 4 and Part 5 of the Housing and Planning Act 2016.

Introduction

Financial Penalty (FP)

The new powers to issue a Financial Penalty came into force on April 6 2017 under Chapter 4 and schedule 9 of the Housing and Planning Act 2016 (“2016 Act”). A FP can be issued to a landlord (includes other responsible persons) who commits one of the following Housing Act 2004 (“2004 Act”) offences.

- Section 30 – not comply with an improvement notice
- Section 72 (1) – not licence a house in multiple occupation
- Section 72 (2) – licensed HMO that is overcrowded
- Section 72 (3) – not comply with HMO licence conditions
- Section 95 (1) – not licence a private rented property (non-mandatory HMO)
- Section 95 (2) – not comply with a private rented property licence condition.
- Section 139 – overcrowding notice for HMO
- Section 234 – non-compliance a HMO Management Regulation

A new offence is created by section 21(1) of the 2016 Act; the breach of a Banning Order. The option to issue a FP is available. This power will not be available until later in 2017 with the current proposed commencement date; 1st October 2017.

The new section 249A of the Housing Act 2004 (“2004 Act”) allows the Local Housing Authority (LHA) to issue a FP limiting the maximum penalty at £30,000.

Rent Repayment Orders (RRO)

Rent Repayment Orders can already be applied for by a LHA or tenant under sections 73 and 96 of the 2004 Act for the following offences;

- Offence of failing to license an HMO under section 72 (1) of the 2004 Act;

- Offence of failing to license a licensable house under section 95(1), Part 3 of the 2004 Act.

A tenant can only make an application where the LHA had either secured a conviction *or* following a successful RRO award.

Part 2, Chapter 4 of the 2016 Act widened the option to make an application to the First Tier Tribunal (FTT) for a RRO. This came into force on April 6 2017. An application for a RRO can be made, within 12 month period, by a LHA or tenant against a landlord who commits one of the following Housing Act 2004 (“2004 Act”) offences (whether or not convicted) (*application for RRO - in addition to issuing a FP).

- Failure to comply with an Improvement Notice under section 30*,
- Failure to comply with a Prohibition Order under section 32(1),
- Offence of failing to license an HMO under section 72 (1)*,
- Offence of failing to license a licensable house under section 95(1) Part 3*,
- 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

A new offence is created by section 21(1) of the 2016 Act; the breach of Banning Order. The option to apply for a RRO is available. This power will not be available until later in 2017 with the current proposed commencement date; 1st October 2017.

Financial Penalties as an alternative to taking a prosecution.

The Government have introduced the FP as part of its campaign to clamp down heavily on criminal landlords; Ministers have made it very clear that they expected this power to be used robustly and they are not a lighter option to a prosecution. LHA have been given the authority to both determine whether to prosecute and the level of FP to impose; at up to £30,000. The level of penalty in the Magistrates Court is now unlimited for all offences where a FP could also be issued. All monies collected following the issue of a FP can be retained by the LHA to further its statutory functions in relation to private housing enforcement work.

The 2016 Act has also introduced the “Landlord Banning Order” (LBO) for the most serious and prolific offenders and the “Rogue Landlord Database” (RLD) of rogue landlords and property agents convicted of certain offences. Both elements are scheduled to come into force on 1

October 2017. Whilst a landlord issued with a FP* can be placed on the RLD (* requiring two FP within a 12 month period) a FP will not be a “Banning Order Offence” and so the issuing of a FP will preclude a LHA from seeking to apply to a FTT for a LBO.

The legislation does not permit LHA to both issue a FP and prosecute for the same offence. If a person has been convicted or is currently being prosecuted, the LHA cannot also impose a FP in respect of the same offence. Similarly, if a FP has been imposed, a person cannot then be prosecuted of an offence for the same conduct. A LHA must determine which route to follow

The Statutory Guidance says that a prosecution may be the most appropriate option where an offence is particularly serious or where the offender has committed similar offences in the past. The first of five stages of ‘Setting the Penalty’ offers a means of Banding the Offence based on the seriousness of the offence, culpability of the landlord and impact on tenant and community. The five stages allow a wide consideration of the appropriateness of the penalty chosen including the means, and the table below acts as a guide. As part of reviewing whether to prosecute the LHA should consider the scope for working together with other LHA where a landlord has committed breaches in more than one local authority area.

The decision whether to prosecute will be considered for each offence, but the Council will regard prosecution as the preferred option for the higher banded offences and offences that the LHA determine fall at the threshold where it is proportionate to look to seek further redress, ultimately through the RLD and BO procedures. This approach will meet the Government’s aim of clamping down heavily on a criminal landlord or letting agents.

Banding the Offence to Determining the Action (using scoring matrix)

Band 1				Band 2				Band 3				Band 4			
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Caution															
Financial Penalty – Rent Repayment Order optional															
			Financial Penalty and Rent Repayment Order Register on Rogue Landlord Database (2 FP within 12M period)												
								Prosecution and Rent Repayment Order Banning Order Offence – register on Database							
										Consider -application to Ban Landlord					

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Setting the Financial Penalty (FP) for a Landlord.

A Local Authority must determine the level of FP that can be awarded against a landlord. Dover District Council has agreed this five stage process to provide a framework to assist with “*determining the level of fine*” which will ensure consistency, transparency and a fair assessment for all parties.

The process has taken into account the following documents;

1. The statutory guidance issued by the Secretary of State under;

- Section 41 (4) of the 2016 Act relating to making applications for Rent Repayment Orders.
 - Article 12 of the new schedule 13A in the 2004 Act.
2. The Code for Crown Prosecutors which gives guidance to prosecutors on the general principles to be applied when making decisions about prosecutions.
 3. Dover Districts Council Enforcement Policy (incorporating the Private Sector Housing Enforcement Policy)

Principles in the Statutory Guidance for Financial Penalties.

This explains that the FP should; reflect the severity of the offence, the culpability and track record of the offender, the harm caused to the tenant, the punishment of the offender, to deter the offender from repeating the offence, to deter others from committing similar offences and to remove any financial benefit the offender has from offending.

The five Stages in ‘Determining the Level of Financial Penalty’.

Stage 1: Banding the offence. The initial FP band is decided following the assessment of two factors;

- Culpability of the landlord; and
- The level of harm that the offence has had.

The scores are multiplied to give a penalty score which sits in one of four penalty bands;

Stage 2: Amending the penalty band based on aggravating factors.

Stage 3: Amending the penalty band based on mitigating factors.

Stage 4: A Penalty Review. To review the penalty to ensure it is proportionate and reflects the landlord’s ability to pay.

Stage 5: Totality Principle. A consideration of whether the enforcement action is against one or multiple offences, whether recent related offences have been committed and ensuring the total penalties are just and proportionate to the offending behaviour

Stage1: Banding the level of Offence, (there are two factors to assess)

Banding the Offence	
<p>Factor 1.</p> <p>Culpability of Landlord (seriousness of offence and culpability)</p> <p>To consider as part of assessment</p> <ul style="list-style-type: none"> a. the scale and scope of the offences, b. what length of time did the offence continue for or repeat over? c. what was the legislation being breached? d. to what extent was the offence premeditated or planned, e. whether the landlord knew, or ought to have known, that they were not complying with the law, f. the steps taken to ensure compliance. g. whether the landlord has previous relevant unspent housing offence related convictions (source National Landlord database), h. the likelihood of the offence being continued, repeated or escalated. i. the responsibilities the landlord had with ensuring compliance in comparison with other parties 	<p>Assessment:</p> <p>The landlord is to be assessed against four levels (low, moderate, high or significant) of culpability:</p> <hr/> <p>Significant - Where the offender deliberately or intentionally breached, or flagrantly disregarded, the law.</p> <hr/> <p>High – Landlord had actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken.</p> <hr/> <p>Moderate - Offence committed through act or omission which a landlord exercising reasonable care would not commit</p> <hr/> <p>Low - Offence committed with little fault, for example, because:</p> <ul style="list-style-type: none"> a. Significant efforts were made to address the risk although they were inadequate on this occasion b. There was no warning/circumstance indicating a risk c. Failings were minor and occurred as an isolated incident
<p>Factor 2</p>	<p>Assessment:</p>

<p>Level of Harm (for tenant, community)</p> <p>To consider as part of assessment</p> <ul style="list-style-type: none"> a. Circumstances or vulnerabilities or actual discrimination against the tenant or tenants. (age, illness, language, ability to communicate, young children, disabilities or in relation to any protected characteristic (Equalities Act 2010) b. Tenant’s views about the impact that the offence has had on them. c. The extent to which other people in the community have been affected, for example, because of anti-social behaviour, excessive noise and damage to adjoining properties. d. was more than one other household affected, e. The level of actual or potential physiological or physical impact on tenant(s) and third parties? f. What regulation, legislation, statutory guidance or industry practice governed the circumstances of the offence? g. has the level of trust been breached and have landlord actions impacted on sector? 	<p>The landlord is to be assessed against four levels (low, moderate, high or significant) of harm or consequence:</p> <p>Significant.</p> <ul style="list-style-type: none"> ▪ Serious adverse effect(s) on individual(s) and/or having a widespread impact ▪ Significant risk of an adverse effect on individual(s) – including where persons are vulnerable ▪ Significant disregard of Regulator or legitimate industry role with significant deceit <p>High</p> <ul style="list-style-type: none"> ▪ Adverse effect on individual(s) (not amounting to significant) ▪ High risk of an adverse effect on individual(s) or high risk of serious adverse effect, some vulnerabilities. ▪ Regulator and/or legitimate industry substantially undermined by offender’s activities ▪ Consumer/tenant misled <p>Moderate</p> <ul style="list-style-type: none"> ▪ Moderate risk of an adverse effect on individual(s) (not amounting to low risk) ▪ Public misled but little or no risk of actual adverse effect on individual(s)
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	<p>Low</p> <ul style="list-style-type: none"> ▪ Low risk of an adverse effect on individual(s) ▪ Public misled but little or no risk of actual adverse effect on individual(s)
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Scoring Matrix to Determine the Level of Fine.

Scoring Matrix for Financial Penalty					
FACTORS					
Level of Culpability (seriousness of offence)	Significant	4	8	12	16
	High	3	6	9	12
	Moderate	2	4	6	8
	Low	1	2	3	4
Level of Harm		Low	Moderate	High	Significant

Financial Penalty Banding and Penalty Scores

Penalty Band	Band 1				Band 2				Band 3				Band 4			
Penalty Score	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16

Financial Penalty	£250	£500	£750	£1000	£2000	£4000	£6000	£8000	£10,000	£12,000	£15,000	£18,000	£20,000	£23,000	£26,000	£30,000
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Stage 2: Amending the penalty band based on aggravating factors.

Objective: to consider aggravating factors of the offence that may influence the FP. A significant aggravating factor may allow the FP to be increased by a FP point.

Example aggravating factors:

- Previous convictions, having regard to;

a) The nature of the offence to which the conviction relates and its relevance to the current offence; and

b) The time that has elapsed since the conviction (is conviction spent)?

- Motivated by financial gain, profited from activities.
- Deliberate planned concealment of activity resulting in offence and obstructive nature of landlord towards investigation
- Established evidence of longer term impact on the (wider) community as a consequence of activities.
- Role within the private rented sector and familiarity with responsibilities and current level of responsibility with managing and letting private rented properties.
- Refusal to accept offer of, or respond to LHA advice regarding responsibilities, warnings of breach or learned experience from past action or involvement of LHA or other Regulatory Body.
- Any further factor that can be deemed of sufficiently aggravating nature that is not covered above or within the culpability and harm banding factors.

Stage 3: Amending the penalty band based on mitigating factors

Objective: to consider any mitigating factors and whether they are relevant to the offence. A significant mitigating factor may allow the FP to be decreased by a FP point.

Example mitigating factors:

- No evidence of previous convictions or no relevant/recent convictions
- Voluntarily steps taken to remedy problem
- High level of co-operation with the investigation, beyond that which will always be expected
- Good record of maintaining property and compliance with legislation, statutory standards and industry standards
- Self-reporting, co-operation and acceptance of responsibility
- Mental disorder or learning disability, where linked to the commission of the offence
- Serious medical conditions requiring urgent, intensive or long-term treatment where linked to the commission of the offence.
- Age and/or lack of maturity where it affects the responsibility of the offender
- Any further factor that can be deemed of sufficiently mitigating nature that is not covered above or within the culpability and harm banding factors.

Stage 4: A review of the financial penalty to ensure that the case can be made and that the chosen approach is proportionate:

Step 1: to check that the provisional assessment of the proposed FP meets the aims of the Crown Prosecutions sentencing code:

- Punishment of offender
- Reduction of/stopping crime
- Deterrent offender or for other potential offenders
- Reform of offender
- Protection of public
- Reparation by offender to victim(s)
- Reparation by offender to community
- Remove any financial benefit the offender may have obtained as a result of committing the offence.

Step 2: to check that the proposed FP is proportionate and will have an appropriate impact.

Local authorities should use their existing powers to, as far as possible, make an assessment of a landlord's assets and any income (not just rental income) they receive when determining an appropriate penalty by making an adjustment to the financial penalty band. The general presumption should be that a FP should not be revised downwards simply because an offender has (or claims to have) a low income. Similarly, if a landlord with a large portfolio was assessed to warrant a low FP, the FP might require adjustment to have sufficient impact, and to conform to sentencing principles.

Part 6, Schedule 16 of the Crime and Courts Act 2013 permits the value of any assets owned by the landlords, e.g. rental property portfolio, to be taken into account when making an assessment and setting the level of penalty. The FP is meant to have an economic impact on the landlord, removing reward for criminal activities and acting as a deterrent to bad practice.

In setting a financial penalty, the LHA may conclude that the offender is able to pay any financial penalty imposed unless the offender has supplied any financial information to the contrary. It is for the offender to disclose to the LHA such data relevant to his financial position as will enable it to assess what he can reasonably afford to pay. Where the LHA is not satisfied that it has been given sufficient reliable information, the LHA will be entitled to draw reasonable inferences as to the offender's means from evidence it has heard and from all the circumstances of the case which may include the inference that the offender can pay any financial penalty.

Process: The offender will be asked to submit relevant information as part of the process and the request for financial information will be incorporated into the notes on the "notice of intended action", the first step with issuing a FP notice.

Stage Five: Totality principle

Objective: Where the offender is being considered to be issued with more than one financial penalty, the LHA should consider the Sentencing Council guidance "Offences Taken into Consideration and Totality - Definitive Guideline". Where separate financial penalties are imposed the LHA must be careful to ensure that there is no double-counting. Section 249A of the 2004 Act (amended) states that 'only one financial penalty under this section may be imposed on a person in respect of the same conduct'. The 2016 Act does permit the LHA to issue a FP and also apply for a RRO. Where the FP is issued the FTT must award the maximum RRO.

"The total financial penalty is inevitably cumulative". The LHA should determine the financial penalty for each individual offence based on the seriousness of the offence and taking into account the circumstances of the case including the financial circumstances of the offender so far as they are known, or appear, to the LHA. The LHA should add up the financial penalties for each offence and consider if they are just and proportionate.

If the aggregate total is not just and proportionate the LHA should consider how to reach just and proportionate financial penalties. There are a number of ways in which this can be achieved.

Examples:

- where an offender is to be penalised for two or more offences that arose out of the same incident or where there are multiple offences of a repetitive kind (management offences or breach of conditions), especially when committed against the same person, it will often be

appropriate to impose for the most serious offence a financial penalty which reflects the totality of the offending where this can be achieved within the maximum penalty for that offence. No separate penalty should be imposed for the other offences;

- Where an offender is to be penalised for two or more offences that arose out of different incidents, it will often be appropriate to impose a separate financial penalties for each of the offences. The LHA should add up the financial penalties for each offence and consider if they are just and proportionate. If the aggregate amount is not just and proportionate the LHA should consider whether all of the financial penalties can be proportionately reduced. Separate financial penalties should then be passed.
- Where a LHA has determined that it will apply for a RRO within the 12 month deadline the FP should be reviewed to ensure the total penalty is proportionate as guided by Stage 4. The FP may be adjusted accordingly knowing that, *if successful*, the RRO award will be the maximum.

Setting the Rent Repayment Order (RRO) for a Landlord.

A tenant or a LHA may individually apply to a FTT for a RRO award in respect of their rent payments within 12 months of an offence. Under section 73 (7)(iii) and section 96 (7)(iii) of the 2004 Act and section 42 (2)(b) of the 2016 Act; the LHA is required to stipulate, in the notice of intended proceedings, how much the order for repayment of rent is. The level or rent relates to a defined period of 12 months in the period leading up to the offence or during the 12 month period whilst the offence was being committed. The local investigation will determine the levels of rent paid. A LHA has no control over the level of rent a tenant may apply for.

The Government have advised that the RRO should ensure it addresses the following factors; punishment of the offender, the recipient of any recovered rent, deter the offender from repeating the offence, deter others from committing similar offences and remove any financial benefit the offender may have obtained as a result of committing the offence. LHA must have regard to the statutory guidance issued under section 41(4) of the 2016 Act when exercising their functions in respect of RRO.

Where a conviction has been achieved the LHA will apply to the FTT for the maximum rent repayment, within a 12 month period. Section 46 of the 2016 Act states this is the level that must be awarded to either a tenant (except for section 72(1) or 95(1) offences) or a LHA where the landlord has been convicted or a FP issued in relation to that offence. In these cases there is no discretion within "Determining the Penalty".

If there is no conviction or a FP is not issued then the Council will apply to the FTT for the maximum rent repayment when a RRO is applied for. . If a FP is to be issued, the penalty point/ banding first determined will be reviewed under Stage 5 to ensure that the Totality Principle is met. This aims to ensure that the total penalties are just and proportionate to the offending behaviour.

The legislation places the ultimate decision for determining the financial award under a Rent Repayment Order with the FTT in line with section 74 and 97 of the 2004 Act and sections 44 and 45 of the 2016 Act. The FTT must take into account; the conduct of the landlord, the financial circumstances of the landlord, and whether the landlord has at any time been convicted of an offence to which this Chapter (Part 2 Chapter 4 of the 2016 Act) applies. It is felt that not making the application for the maximum award would undermine the discretion of the FTT.

Appeals

A person issued with a FP has a right of appeal to the First Tier Tribunal (Para 10 of Schedule 13A of the 2016 Act)

A person placed on the DRL has a right of appeal to the First Tier Tribunal (Section 32 of the 2016 Act).

A person aggrieved by the decision of the FTT in relation to the making of a rent repayment order may appeal under the provisions of Part 2 Chapter 5 of the 2016 Act.

NOTE

Financial Penalty Process and Right for Person to make Representations..

Before imposing a financial penalty on a person under section 249A of the 2004 Act the LHA must, within 6 months of the date of the offence, give the person notice of the authority's proposal to do so (a "notice of intent"); incorporating why and the level of fine. A person in receipt of the notice of intent can make written representations within 28 days. Subsequently the LHA must decide whether to issue a financial penalty and the amount and to do so must issue a final notice.

Similarly, section 42 of the 2016 Act requires that the LHA must first serve a notice of intended proceedings on the landlord. He can then make written representations within 28 days of the date of service to the LHA about the proposed RRO

The landlord has the right to make representations and any representation must be duly considered. The LHA will provide a response within 21 days (no statutory time period) with a decision notice stating whether the penalty will be withdrawn, varied or upheld.

All communications for representations made against the intended FP or RRO are to be written and sent to:

Private Sector Housing Manager

Dover District Council, White Cliffs Business Park

PSH Enforcement Policy Revised October 2017

Dover, CT16 3PJ

Telephone: 01304 872397

email to: privatesectorhousing@dover.gov.uk