

Committee:	Housing Board	Date:	7 December 2017
Title:	The Housing & Planning Act – Implications for Environmental Health (Private Sector Housing) Services		
Report Author:	Marcus Watts, Environmental Health Manager (Protection)	Item for decision:	No

Summary

1. This report briefs members on the Housing & Planning Act 2016 which introduced a range of measure that came into effect in 2017 to tackle rogue landlords. The main measures include the introduction of Civil Penalties and the extension of rent repayment orders.

Recommendations

2. For the Housing Board to:
 - a. note the new powers available to the Environmental Health arising from the Housing & Planning Act 2016

Financial Implications

3. From existing resources. Should the Council adopt the powers and develop a policy, any income received from a civil penalty can be retained by the local housing authority provided it is used to further statutory functions in the relation to private sector housing enforcement activities.
4. Operating costs will be covered within existing resources. There may be implications for debt recovery if landlords do not pay the civil penalty charge.

Background Papers

5. The following papers were referred to by the author in the preparation of this report and are available for inspection from the author of the report:
 - a. Housing & Planning Act 2016

Impact

- 6.

Communication/Consultation	No communication/consultation has taken place
Community Safety	n/a

Equalities	n/a
Health and Safety	n/a
Human Rights/Legal Implications	<p>Officers will be able to use the additional powers given to them by the Housing and Planning Act 2016 to assist with cracking down on rogue landlords and disrupt their business model.</p> <p>There is a risk of legal challenge from landlords for the civil penalty, firstly to the Council after receiving the Notice of Intent and secondly to the First-tier Tribunal once the Final Notice has been received.</p>
Sustainability	n/a
Ward-specific impacts	All wards
Workforce/Workplace	Environmental Health

Situation

7. The private rented sector is an important part of the housing market. In Uttlesford 14% of all dwellings are rented from a private landlord. The Government is aware that that they want to support good landlords who provide decent, well-maintained homes. However, they also want to tackle poor, criminal landlords who knowingly rent out unsafe and substandard accommodation.
8. The Housing and Planning Act became law on May 12, 2016 and introduced a range of measures to tackle rogue landlords. These measures include:
 - Civil penalties as an alternative to prosecution for certain specified cases.
 - Extension of the rent repayment order to cover additional specified offences.
 - A database of rogue landlords and property letting agents.
 - Banning orders for serious and prolific offenders.
 - Regulations for landlords to ensure that a qualified person has checked that the electrical safety standards are met in private rented properties and
 - Further clarification of abandonment.
9. Civil penalties and the extension of rent repayment orders came into effect on 6 April 2017. Banning orders and the database of rogue landlords came into force on 1 October 2017.

Civil Penalties

10. The introduction of the civil penalties is in the expectation that the power will be used robustly as a way of cracking down on rogue landlords.
11. A civil penalty might be used as an alternative to a prosecution for offences under the Housing Act 2004. However, it is important to note that the burden of proof required for these offences remains the same as it would be for a prosecution. The offences would include:
 - Failure to comply with an Improvement Notice
 - Failure to licence a mandatory or additional licensable HMO
 - Contravention of an overcrowding notice
 - Failure to comply with Management Regulations in respect to HMOs
12. The maximum penalty that can be imposed is £30,000. However, the maximum should be reserved for the very worst offenders. The Council should develop its own policy on determining the appropriate level of the civil penalty in a particular case, having regard to
 - Severity of the offence
 - Culpability and track record of the offender
 - The harm caused to the tenant
 - The need to punish the offender
 - The need to deter the offender from repeating the offence
 - Act as a deterrent from others committing similar offences, and
 - The ability to remove any financial benefit the offender may have obtained as a result of committing the offence
13. The process for issuing a civil penalty is first to issue a Notice of Intent, which includes the proposed financial penalty, reasons for issue and rights to make representations.
14. A person who is given a Notice of Intent may make written representations to the local housing authority about the intention to impose a financial penalty within 28 days of receiving the Notice.
15. The Council will then decide whether to impose a penalty and its amount. After taking into consideration any representation, a Final Notice is issued requiring the said penalty to be paid within 28 days. Again, the notice must set out the amount, reasons for the penalty, details on how to pay, the period for payment (28 days), information on right to appeal and consequences of failure to comply with the notice.
16. The landlord has the right to appeal at the First-tier Tribunal against the decision or the amount. If the landlord does not pay a civil penalty it is referred to the County Court for an Order of the Court.

17. A policy outlining the appropriate level of civil penalty for Housing Act offences will need to be developed should the Council wish to adopt the civil penalty charge.

Rent Repayment Orders

18. The Council and tenants are able to apply to the First-tier Tribunal for a rent repayment order. This is where the First-tier Tribunal can require a landlord to repay a specified amount of rent. Originally this could be sought where a property failed to obtain a HMO licence. The Housing and Planning Act 2016 has extended this to include:

- Failure to comply with an Improvement Notice
- Failure to comply with a Prohibition Order
- Breach of a Banning Order
- Use of violence to secure entry to a property under section 6 of the Criminal Law Act 1977
- Illegal eviction or harassment of the occupiers of a property

19. As the burden of proof required for the First-tier Tribunal to make its decision is that of a criminal standard, the Tribunal must be satisfied that the landlord has committed an offence or that the courts have convicted the landlord.

20. The guidance produced by Department for Communities and Local Government for rent repayment orders highlighted that Local Housing Authorities are expected to develop and document their own policy on when to prosecute and when to apply for a rent repayment order.

21. Following the adoption of a Corporate Enforcement Policy by Cabinet in October of this year, a review of the Environment Health Enforcement Policy will be made in 2018. The updated enforcement policy will take into account the application of rent repayment orders.

Risk Analysis

22.

Risk	Likelihood	Impact	Mitigating actions
n/a information only item			

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.